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# **BILINGUAL VOTING REQUIREMENTS REPEAL ACT**

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*United States*  
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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION  
ON  
**H.R. 351**  
BILINGUAL VOTING REQUIREMENTS REPEAL ACT

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APRIL 18, 1996

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**Serial No. 68**



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# **BILINGUAL VOTING REQUIREMENTS REPEAL ACT**

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**THURSDAY, APRIL 18, 1996**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The subcommittee met, pursuant to notice, at 9:38 a.m., in room 2226, Rayburn House Office Building, Hon. Charles T. Canady (chairman of the subcommittee) presiding.

Present: Representatives Charles T. Canady, Bob Inglis, Michael Patrick Flanagan, F. James Sensenbrenner, Jr., Lamar Smith, Bob Goodlatte, Barney Frank, and Melvin L. Watt.

Also present: Kathryn A. Hazeem, chief counsel; John H. Ladd, assistant counsel; Mark Carroll, staff assistant; and Robert Raben, minority counsel.

## **OPENING STATEMENT OF CHAIRMAN CANADY**

Mr. CANADY. The subcommittee will come to order. I want to thank all the witnesses for being here today. My voice comes and goes, so I am going to turn over the Chair to Mr. Goodlatte. But I do want to thank all the witnesses and all those participating today. I'd like to ask now that Mr. Goodlatte take the Chair.

Mr. GOODLATTE [presiding]. Thank you, Mr. Chairman.

Government mandated bilingualism does not work. It may be designated to be inclusive, but in reality it is separatist in nature. It would create two neighboring separate but equal cultures, and it would begin to tear at the fabric of what makes us Americans unique in our diversity. Bilingual ballots do not increase voting participation by language minorities, nor do they guarantee, as the proponents have argued, the ability to cast an independent informed vote. An independent and informed vote depends not so much on the language of the ballot, but on the ability to make an independent and informed decision after listening to the candidates and learning about the issues.

[The bill, H.R. 351, follows:]



104TH CONGRESS  
1ST SESSION

# H. R. 351

To amend the Voting Rights Act of 1965 to eliminate certain provisions relating to bilingual voting requirements.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. PORTER introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Voting Rights Act of 1965 to eliminate certain provisions relating to bilingual voting requirements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Bilingual Voting Re-  
5 quirements Repeal Act of 1995".

6 **SEC. 2. REPEAL OF BILINGUAL VOTING REQUIREMENTS.**

7 (a) BILINGUAL ELECTION REQUIREMENTS.—Section  
8 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-  
9 1a) is repealed.

1 (b) VOTING RIGHTS.—Section 4 of the Voting Rights  
2 Act of 1965 (42 U.S.C. 1973b) is amended by striking  
3 subsection (f).

4 **SEC. 3. CONFORMING AMENDMENTS.**

5 (a) REFERENCES TO SECTION 203.—The Voting  
6 Rights Act of 1965 (42 U.S.C. 1973 et seq.) is amended—

7 (1) in section 204, by striking “or 203.”; and

8 (2) in the first sentence of section 205, by  
9 striking “, 202, or 203” and inserting “or 202”.

10 (b) REFERENCES TO SECTION 4.— The Voting  
11 Rights Act of 1965 (42 U.S.C. 1973 et seq.) is amended—

12 (1) in sections 2(a), 3(a), 3(b), 3(c), 4(d), 5, 6,  
13 and 13, by striking “, or in contravention of the  
14 guarantees set forth in section 4(f)(2)”;

15 (2) in paragraphs (1)(A) and (3) of section  
16 4(a), by striking “or (in the case of a State or sub-  
17 division seeking a declaratory judgment under the  
18 second sentence of this subsection) in contravention  
19 of the guarantees of subsection (f)(2)”;

20 (3) in paragraphs (1)(B) and (5) of section  
21 4(a), by striking “or (in the case of a State or sub-  
22 division which sought a declaratory judgment under  
23 the second sentence of this subsection) that denials  
24 or abridgments of the right to vote in contravention  
25 of the guarantees of subsection (f)(2) have occurred

- 1 anywhere in the territory of such State or subdivi-  
2 sion”.

○



On our first panel today, we will hear from six distinguished colleagues. First we will hear from the sponsor and author of H.R. 351, Congressman John Porter. Congressman Porter has represented Illinois' 10th District for nine terms. He is the chairman of the Labor, Health and Human Services and Education Appropriations Subcommittee.

Following Congressman Porter will be Congressman Bob Livingston. Congressman Livingston has served Louisiana's First District since 1977 and is the chairman of the House Appropriations Committee.

Next to testify will be Congressman Xavier Becerra, who represents the 30th District of California. Congressman Becerra is a member of the Judiciary Committee and the Economic and Educational Opportunities Committee.

We will also hear from Congressman Bill Lipinski, who hails from Chicago. Congressman Lipinski has represented the Third District of Illinois since 1983, and is a member of the Transportation and Infrastructure Committee.

Next we will hear from Congresswoman Nydia Velázquez. She represents New York's 12th District, and is a member of the Banking and Financial Services and Small Business Committees.

Concluding our first panel will be Congressman Peter King from the Third District of New York. Congressman King serves on the Banking and Financial Services Committee and International Relations Committee.

We welcome you all. Without objection, your full statements will be made part of the record. I ask you to summarize your testimony in 5 minutes. We'll begin with Congressman Porter. Welcome.

**STATEMENT OF HON. JOHN EDWARD PORTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. PORTER. Mr. Chairman, thank you very much for the opportunity to testify this morning regarding H.R. 351. Mr. Chairman, it is perhaps trite but true that except for the original peoples, America has always been a nation of immigrants. People came from everywhere, the English, the Scotch, the Germans, the Swedes, the Dutch, the Greeks, Africans, Irish, Italians, Poles, Slavs, and many many others. Each retained their native cultures and languages as was their right in our society to the extent that they wished, and gradually integrated into American society and learned the American language.

Until recently, except to help foreign visitors, there were no signs in our country in other languages, no telephone instructions, and no bilingual education programs that did not facilitate the learning of English at an early age. The people who came, learned the American language because they knew they could never get ahead without it and because they wanted to be a part of this great land of freedom.

As a teenager, my father taught Italian immigrants English and they taught him Italian. It was a good deal for both. When he went to college, he got A's in Italian as well as in Spanish and in French.

We have always known that to have a nation, we must have one central language that we all share and that we all can communicate with one another with. Otherwise, we are simply a collection

of ethnic ghettos. Having one central language does not prevent us from preserving our own cultures or using our own native languages. We are not talking here about the personal use of language. We are talking about the official use of language.

Government began undermining the imperative to learn the central language some time ago by making it easier not to. The intention was probably very pure, but the concept certainly was not. One of the most destructive and ill-conceived pieces of legislation is one that permits citizens to conduct the most central of government's affairs, elections, in languages other than the central American language. Even though you cannot be in this country a naturalized citizen without demonstrating, and I quote from the law "an understanding of English, including an ability to read, write and speak words in ordinary English usage."

Mr. Chairman, we may think that it is sensitive and loving to immigrants not to burden them with the need to know and understand the central language of America, English. Quite the opposite, in my judgment, is true. All that we do to facilitate their functioning without English is to impede their opportunities and to condemn them to life in the ghetto without mobility in a society that requires it, and without hope for getting ahead.

We are a nation of a big smile and a helping hand and the ability to talk to one another. At a time of deep divisions within our society, Government should not be putting its stamp of approval upon those divisions, and indeed helping to facilitate them. Government should be working to end them and to heal them. We should repeal in my judgement, Mr. Chairman, every law that flies in the face of this concept.

I thank you for the opportunity to testify this morning.

[The prepared statement of Mr. Porter follows:]

PREPARED STATEMENT OF HON. JOHN EDWARD PORTER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am very pleased to have the opportunity to testify on behalf of H.R. 351, my legislation to repeal the bilingual ballot requirement.

I am very proud of our nation's diversity. For over 200 years the United States has welcomed individuals from around the world who seek political, religious, and economic freedom. By sharing their talents and experiences, these individuals strengthen our country while enhancing our distinct culture.

The millions of individuals who have arrived at our borders have always participated in American society by embracing the English language. Of course, individuals are free to use other languages as they please, but English is the one language that binds our nation's citizens together and acts as the common denominator for American life and discourse.

Recently however, we have begun to fragment our society by dividing ourselves into minority language groups. Rather than pull all Americans together under the use of a common language, we have promoted our separation into distinct ethnic groups under very ill conceived amendments to the Voting Rights Act.

In 1975, we enacted amendments to require bilingual ballots in counties in which five percent of the voting population were members of a single language minority possessing an illiteracy rate higher than the national average. In 1992, we further expanded the scope of the Act by adding an alternative coverage formula for counties where there are more than 10,000 voting age citizens who are English deficient.

This law directly contradicts the value of our shared language and the responsibilities imposed on anyone seeking American citizenship. Many proponents of this law argue that considerable numbers of recently naturalized immigrants are not sufficiently fluent in English to understand complicated election procedures and issues. Also, supporters claim that some long-time U.S. citizens, who have grown up in ethnic communities and learned very little English in school, now need assistance. But, since 1906, an immigrant seeking to become a naturalized United States citizen

must demonstrate oral English literacy. In 1950, Congress added the requirement that persons who wish to become citizens must "demonstrate an understanding of English, including an ability to read, write and speak words in ordinary English usage."

If immigrants are gaining citizenship without knowing how to read English, the Immigration and Naturalization Service is not enforcing the law. If eighteen year old citizens, born and raised in the United States, are illiterate in English, our education system must be improved. I do not believe that multi-language ballots should be used to fill any such gaps in our immigration and education systems.

Indeed, I believe that the government must not continue to condone an individual's lack of initiative or unwillingness to seize the opportunity to learn English. By providing bilingual ballots, we are providing a disincentive to learn English. We are giving our tacit approval to those who have evaded the law and we send a message that it does not matter whether an American can speak English or not. This is the wrong message.

In addition to its detrimental effects on our society, the multilingual ballot requirement is a classic example of an unfunded federal mandate on local governments. I believe that local governments could find better ways to spend their money—perhaps for English language classes for new immigrants.

Also, the translation of sometimes complex ballot language used in referenda from English to another language is not always accurate. On sensitive issues, such as euthanasia or abortion, it is difficult enough to get English speakers to agree on the wording of referenda, let alone on a difficult translation of these words. Even "simple" translations are sometimes wrong—in 1993, a New York City ballot erroneously printed the Chinese character for "no" as a translation for "yes." Obviously, exact translations cannot be taken for granted.

Mr. Chairman, I sincerely believe that every United States citizen has the responsibility to cast informed votes during federal, state, and local elections. Participation in our democratic process must be encouraged. But rather than provide bilingual voting assistance—a practice that only fractionalizes our society and encourages individuals to remain outside of mainstream American society, we must make every effort to encourage individuals to learn to communicate in English.

As the language of our country, persons who do not speak English face impediments to success. It harms these very persons when we reduce the pressure to learn English or give the impression that our government does not consider English to be important. While each of us should honor and preserve our own ethnic and cultural identity, we must retain our common bond of language. That language is English.

I thank the Constitution Subcommittee for addressing this important issue, and I look forward to working with you to repeal this unnecessary, unfunded federal mandate.

Mr. GOODLATTE. Thank you, Congressman Porter.

Congressman Livingston has not yet arrived. So we will move ahead to Congressman Xavier Becerra. Congressman Becerra is a member of the Judiciary Committee.

Welcome. Your statement will be made a part of the record. We'd ask that you limit your remarks to 5 minutes.

#### **STATEMENT OF HON. XAVIER BECERRA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BECERRA. Thank you, Mr. Chairman, and thank you to the members of the subcommittee for the opportunity to be here before you.

Let me begin and try to veer a bit from my written remarks, which I thank you for letting us submit for the record, and say the following. This is not an issue when we talk about Voting Rights Act, the act, and the ability of people to vote using a bilingual ballot if necessary. This is not an issue of being either loving or sensitive. This is an issue of being inclusive rather than exclusive in our participation in this democracy of America.

It is also an effort to undue past heinous discrimination that occurred against various populations in this country. We can look



back to the poll taxes, the precluded those who did not have the moneys to pay for the ability to vote. We can talk about the literacy tests that made it impossible for people who could not get educated, the opportunity to vote, and we can look at the cases of people who were intimidated because they could not speak English very well and being barred from the ability to exercise their franchise as U.S. citizens.

Please let's remember that we're not talking about anyone who is in this country as an immigrant, as a legal resident. We are speaking specifically about a population of people who has said if they have come to this country, they have chosen to become U.S. citizens. They have passed the test. They have sworn allegiance to this country. They are now full-fledged participants, they hope, in this country's society. Or we are talking about people who were actually born in this Nation.

Now to not allow people to participate, to exclude them because perhaps they cannot communicate as well as perhaps or I can in English, or perhaps understand what is written in some of these ballots and for candidacy applications for office, is I think a sin. Let's take a look at where we are today and see how important what we did in 1975 was when we passed the Voting Rights Act amendment which provided for bilingual ballots.

We are now at a point where you can go to California and you may be hit with 10 to 15 propositions. When you take a look at that voter pamphlet that you receive in the mail, which is usually more than 100 pages long of the minutest of print, you could have a graduate degree from any of the best universities in this country and you will have a very difficult time understanding what the legalize in those provisions for those particular ballot measures say. To expect someone with an average education and to expect someone who has an average education and is trying to learn English to understand well, I think is at this stage ridiculous.

What we are talking about doing here with the bilingual ballot is helping those who have said, "I wish to participate. I am a citizen of this country and I wish to fully participate, but not just fully participate. I want to participate knowingly. I don't want to make a mistake. I want to make sure the person I vote for for president or that initiative that talks about the death sentence for someone or for increased taxes or for decreased taxes is the right thing to do." To not let the person do that, because we believe that we must exclusively deal in a language, English, which is by everyone's measure the language of use of this country, I think unfortunately is unrealistic.

We are not trying to be loving to people. We are trying to get them to become fully participatory so that next year perhaps, they will have been able to learn the language well enough so that they will not need the ballot.

What you find in those jurisdictions that have used the ballot is that the expense is minimal. I hope we hear some evidence that it's not, because maybe then there is a reason to undo this. I hope we also hear evidence that there has never been discrimination against a population of people that have been trying to learn English. I suspect what you will find is just the opposite. There's a

great deal of evidence to show that this population in many ways has been discriminated against.

What you will learn is that this isn't costly. This is helpful, and it's a transition. For those who say, well, we don't need this transition because everybody should be learning English, I say to you go to the community colleges in your State and in your cities. Ask the community colleges if they offer English as a second language programs, how many people are applying. Because I know in places like California, you have wait lists that are enormous, 18 months in some cases just to get into a class.

You have places where the English language courses that are offered in private schools are so booked, that they are turning people away constantly. There are people trying to learn the language. For us to say to them now, learn the language because that's what you must do, and we should say that to them. But when it comes time to do perhaps the most important activity this country provides you with as a representative and citizen of a democracy, you can't do that very well because we're not going to let you fully understand what you are about to do, I think is egregious, because we make a great error in trying to enhance our democracy by telling those who have said, "I have become a citizen and I am learning English and I want to be able to understand well what I am doing and make this a better democracy," I think we make a grave mistake.

Mr. Chairman, I thank you for the opportunity to testify. I hope that this subcommittee and the full committee will weigh this proposal very carefully.

[The prepared statement of Mr. Becerra follows:]

PREPARED STATEMENT OF HON. XAVIER BECERRA, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF CALIFORNIA

I. SUMMARY

Thank you Mr. Chairman. I welcome the opportunity to appear before your subcommittee today to comment on H.R. 351, which would repeal Section 203 of the 1965 Voting Rights Act (VRA). Section 203, which was added to the VRA in 1975, provides bilingual election assistance. It has enabled millions of U.S. citizens, millions of our fellow Americans, to participate in our most fundamental right—the right to vote. Repeal of Section 203 would in effect discourage millions of Americans from voting. And, it is for that reason that I must stake my opposition to this bill.

Throughout American history the right of millions of Americans to vote was restricted, and in many cases prohibited due to their race and gender. Opponents of free and open ballots responded to the Civil War Amendments to the Constitution, and in particular the XV amendment, by designing stealthy hurdles. Obstacles such as poll taxes, literacy tests, and declaring political parties private groups outside the scope of state interference were erected by Americans devoted to denying the right to vote to other Americans.

The Voting Rights Act was passed by the Congress in 1965 to ensure that the right to vote, the most fundamental right we possess as American citizens, would not be infringed by either statute, device or custom.

The VRA, and the subsequent amendments, were borne out of the Civil Rights Movement. Great Americans such as Martin Luther King and Cesar Chavez were able to stir the conscience of our country to compel us to face the continuing inequities at the ballot box, as well as other areas of American life.

The Congress approved the 1965 Voting Rights Act in order to prohibit laws which would deny or infringe the right to vote based on race or color. Specifically, the Congress approved the Voting Rights Act to end all forms of exclusion from the polling place by virtue of poll taxes or arbitrary literacy rates. Despite the progress made in many communities, many groups remained disenfranchised due to circumstances which were not anticipated at the time of passage. For example Latinos and Asians, among other groups, were still voting in relatively low numbers.

In 1975, the VRA came up for extension. The Congress not only approved extension, but added a new section, Section 203 designed to embrace eligible American voters who were members of language-minority communities. Section 203 required jurisdictions to provide bilingual election assistance where more than 5 percent of the voting age citizens were of a single language minority.

The Courts, the Congress and the Justice Department under Republican and Democratic Administrations, and even local governments, have consistently recognized, strengthened and defended the Voting Rights Act, and its subsequent amendments. The Supreme Court has recognized the right to vote to encompass the right "to participate in state elections on an equal basis with other qualified voters."

The Department of Justice interprets the 1975 amendments, specifically section 203, to require language assistance in a manner "which enables members of applicable language minority groups to participate effectively in the electoral process." The fundamental issue is that an English-only ballot will discourage participation in a community where a significant percentage of the population is eligible to vote, but not proficient in English.

Despite the fact that minority communities in some areas of the country are still plagued with low voter registration and participation rates, the benefits of the Voting Rights Act, and of the 1975 amendments, are compelling. The Act served as a catalyst for concerned citizens and neighbors who were attempting to bring all Americans into full civic participation.

From 1976 to 1988 the number of Latinos registered to vote in the Southwest nearly doubled from 1.5 million to over 3 million. In Texas there were fewer than half a million registered Latinos in 1976. By 1990, there were over 1.1 million registered Latinos. The Latino voter turnout increased almost 73 percent from 1980 to 1992. Eliminating bilingual ballots will likely reverse the many gains that Latinos and other language minority communities have made.

For example, the GAO issued a report in 1984 which found that 25 percent of Latinos who voted in the election used bilingual ballots. Thus, it comes as no surprise that in 1988, a Yale Law Review examining the impact of bilingual ballots made note of a study which found that 26 percent of bilingual voters would be less likely to register if bilingual ballots were eliminated.

We must avoid changes in policy which would decrease voter participation. Despite the increases in voter registration and participation to which the Voting Rights Act has contributed, minority communities still register and participate at lower rates than other communities. In 1992, only 48.3 percent of eligible Latinos turned out to vote. That compares to 65.5 percent of eligible non-Latino voters. This bill risks consigning language-minority groups to the margins of American society.

The Congress must recognize that the Voting Rights Act, and bilingual ballots specifically, have enabled more Latinos to become full members of our national community. The policies which we adopt must increase voter participation as well as address the root causes of low voter turnout, such as poverty, education and socioeconomic status.

## II. H.R. 351 CONTRIBUTES TO ROOT CAUSES OF LOW VOTER TURNOUT

Repealing Section 203 would conspire with other factors which contribute to low voter turn-out in the Latino community, and would further depress participation. The Latino community is more than twice as likely as non-Latinos to live in poverty—29.3 percent. Only about one-third of adult Hispanic citizens have completed some college. Yet nearly 50 percent of non-Latinos have completed some college.

And, Latinos are not the only members of our country for whom English is still a difficult daily endeavor, and who would be disenfranchised by H.R. 351. According to the Census Bureau, there are nearly 5 million people in the U.S., representing a variety of nationalities, who do not speak English well. Nevertheless, each day they endeavor to work hard, provide for their families, and learn English.

The policies which the Congress approves should support and improve opportunities for all Americans whether native-born or naturalized, rather than foreclose opportunities.

## III. SUPPORTERS OF H.R. 351 HAVE NOT OFFERED A SOUND RATIONALE

We must remember that H.R. 351 would affect a fundamental right—the right of all Americans to vote, whether born on our soil or born abroad. Thus, we must examine its impact with strict scrutiny and ask its proponents what compelling rationale they find for approving its passage.

Some would argue that languages other than English are threatening to overwhelm the English language. Yet, according to the Census Bureau, 97 percent of

all residents above 4 years old speak English "well or very well." Furthermore, the Census has found that in 1890 3.6 percent of the population aged 10 years or older could not speak English. Yet, in 1990 the Census has found that only .8 percent cannot speak English. In fact, in states and communities across the country the demand to learn English is overwhelming the supply of services:

In New York City 14 community colleges and 35 Community Based Organizations offer English as a Second Language (ESL). Yet, wait lists for ESL as long as 18 months persist.

In Los Angeles County, a new citizenship program run by the community colleges served 44,000 persons in its first 18 months. Nevertheless the program is unable to meet the growing demand for ESL.

In Corpus Christ I, Texas, of the 100 students being served in adult literacy as well as English classes, 80 percent are enrolled in ESL. And, 150 students are turned away each month. Furthermore, the wait list is 9-12 months long.

The irony is that despite the Congressional calls for English-only and English-only ballots the Congress has responded to the legitimate demand for English language instruction by cutting the budget for ESL from \$155 million in FY '95 to \$100 million in FY '96.

Proponents of H.R. 351 argue that the cost of providing bilingual ballots and voter assistance is prohibitive. Yet, once again the facts do not bear out the rhetoric:

According to the San Francisco Registrar's Office, the cost of bilingual services in the 1991 election amounted to 4 percent on the overall budget.

The GAO found in its 1986 report on bilingual balloting in the 1984 campaign that 79 percent of the jurisdictions which provided bilingual oral assistance incurred no costs.

The same GAO report found that in 83 of the 295 responding jurisdictions the cost of providing written assistance was 7.6 percent of their budget.

Some would argue that we have to return to a mythical past when every immigrant spoke English in a relatively short period of time, and the government rejected demands for bilingualism. In fact, the United States has a rich tradition of providing bilingual documents to recent immigrants and naturalized citizens who are transitioning into mainstream American culture:

The Continental Congress, in 1774, ordered documents of its deliberations printed in German so that Americans of German descent could understand and embrace the decisions the Congress had made.

Benjamin Rush, a leader in the Revolutionary War, and signer of the Declaration of Independence, founded a German College so that Americans of German descent could learn English free of coercion, and consistent with their liberties as Americans.

Even Anglo settlers of Texas under Mexican sovereignty requested and received official bilingual government documents and laws. Stephen Austin impressed upon the Mexican government that in order to comply with the laws of Mexico, the settlers would have to know exactly what those laws were.

Shorn of any substantive cover, the proponents of H.R. 351 have taken refuge in the argument that enacting English-only laws and eliminating bilingual ballots are important symbols of our national unity. In fact, proponents of Florida's English-only amendment conceded that it would have very like practical impact.

And, in Arizona, proponents of the state's English-only provision, which will soon be reviewed by the Supreme Court, have acknowledged that there is little practical value to the measure. In fact, they admit that they would not oppose bilingual assistance in the delivery of government services.

Regrettably, H.R. 351 would dismantle access to the ballot for millions of Americans in the name of symbolism. It is premised on the myth that naturalized citizens and language minority communities do not want to embrace the "American Dream." It ignores the fact that thousands of legal residents and new Americans wait for months, and sometimes years, to enroll in English classes. Proponents of H.R. 351 do not recognize that at present a higher percentage of the foreign-born speak English than did one hundred years ago.

Limiting an American citizen's access to the ballot simply because his or her English is not as proficient as that of an American who is born here is poor policy, impractical and contrary to our traditions. In short, H.R. 351 is too high a price to pay for symbolism.

Mr. GOODLATTE. Thank you, Mr. Becerra.

Next, we'll hear from Congresswoman Nydia Velázquez from New York. Congresswoman Velázquez.

**STATEMENT OF HON. NYDIA M. VELÁZQUEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Ms. VELÁZQUEZ. I would like to thank Chairman Canady for convening this hearing and allowing me the opportunity to testify on an issue of extreme importance, eliminating multilingual ballots.

The intolerance and hate engulfing our country is deeply troubling, especially since Congress has jumped into the thick. Legislation like this, the immigration bill, and English only, fuels these mean-spirited fires. We here in Congress should be working to extinguish these flames. Instead, we are here yet again debating an undemocratic and discriminatory bill.

How can a country that exalts its Constitution even consider a proposal as undemocratic as eliminating multilingual ballots? To be a truly representative democracy, everyone must have the opportunity to make an informed vote. Our country can only be strengthened by giving everyone the chance to have a voice. Then and only then can we truly claim to be a democracy and have equal protection of laws.

As Americans, it is our duty and responsibility to vote. This duty is shared by all, even those who lack English fluency. We all know that naturalized Americans are required to understand English. This means they must have the ability to read, write, and speak English in ordinary usage. We all know how confusing and technical ballots can be to even native speakers. Let's encourage people to exercise their duty as citizens, not deny them the chance to be a part of our democracy.

We must remember too, that in many places throughout this country, not every U.S. citizen's primary language is English. In my home in Puerto Rico, Spanish is primary. I would like to remind my colleagues that Puerto Ricans are American citizens. Many, like my uncle, have fought for this country. When Puerto Rican soldiers fought in Korea and Vietnam, did Congress require them to be fluent in English? No. They did not need to understand English to die for this country. Yet if we enact this legislation, we will be denying Puerto Rican-Americans the right to participate in that same democratic process they fought to valiantly to preserve.

What will I tell millions of Puerto Rican-Americans like my 84-year-old father, that if he comes to this country, he is not welcome to vote? That is wrong, unjust, and discriminatory. In Puerto Rico, we have a strong democratic tradition of voting. Turnout there is 83 percent, the highest in the Western Hemisphere. Yet there is a huge drop in voter turnout for the Puerto Rican community in the United States. The turnout is cut in half, a mere 36 percent, all because people are intimidated by the language barrier.

We have to tear down these barriers, not erect new ones. Encouraging people to register and vote is very close to my heart. I have spent much of my life in the Latino community registering voters. While still in Puerto Rico, I learned about the huge disparity between voter turnout on the island and on the mainland. By launching the most comprehensive voter registration campaign among Puerto Ricans in this country, I was able to register 250,000 in 3 years. I was able to increase voter participation from 36 percent to 52 percent. All people needed was the opportunity and the understanding. Otherwise, they will not vote.



Our job here in Congress is clear. We must provide the tools and encouragement new voters need. We must safeguard multilingual ballots. Thank you, Mr. Chairman.

[The prepared statement of Ms. Velázquez follows:]

PREPARED STATEMENT OF HON. NYDIA M. VELÁZQUEZ, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW YORK

Good morning, I would like to thank Chairman Canady for convening this hearing and giving me the opportunity to testify on an issue of extreme importance—eliminating multilingual ballots.

The intolerance and hate engulfing our country is deeply troubling, especially since Congress has jumped into the thick. Legislation like this, the immigration bill and English-only fuels these mean spirited fires. We, here in Congress, should be working to extinguish these flames. Instead we are here, yet again, debating an undemocratic and discriminatory bill.

How can a country that exalts its Constitution even consider a proposal as undemocratic as eliminating multilingual ballots? To be a truly representative democracy, everyone must have the opportunity to make an informed vote. Our country can only be strengthened by giving everyone the chance to have a voice. Then, and only then, can we truly claim to be a democracy and have equal protection of laws.

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In Puerto Rico we have a strong democratic tradition of voting. Turnout there is 83%—the highest in the Western Hemisphere. Yet, there's a huge drop in voter turn out for the Puerto Rican community in the United States. The turn out is cut in half—a mere 36%—all because people are intimidated by the language barrier. We have to tear down these barriers, not erect new ones.

Encouraging people to register and vote is very close to my heart. I have spent much of my life out in the Latino community registering voters. While still in Puerto Rico, I learned about the huge disparity between voter turn on the island and on the mainland. By launching Atrévete, a national voter registration drive, I was able to register 250,000 new voters. That's 250,000 new Democratic and Republican voters. All people needed was the opportunity and the understanding. Otherwise they would not vote. Our job, here in Congress, is clear. We must provide the tools and encouragement new voters need. We must safeguard multilingual ballots.

My district is truly multilingual. Many of my constituents are new to this country, from place where their right to vote is severely restricted or even denied. I encourage all of them to register, vote and understand the important issues—the difficult issues. Add the new experience of voting with the fear that our newest Americans carry from their homelands. All of the noise, confuse and police around polling places bring back fearful memories. It is easy to understand how someone could become intimidated. An explanation in their native tongues is not only necessary to overcome their fear, but also gives them—our newest citizens—equal protection and opportunities they deserve. I owe my constituents that much. Congress owes this country and the American people that much.

Yet opponent of multilingual ballots claim that they are divisive and ghettoize our people. This is just plain false. They promote the bond of voting for shared political beliefs like equal opportunity and freedom. Voting brings fragments of society with common concerns together to create an even stronger force—a force for change.

Mr. Chairman, we should be strengthening democracy and increasing voter turnout—not eliminating multilingual ballots. Let's not muffle the voice of so many new and promising Americans  
Thank you.

Mr. GOODLATTE. Thank you, Ms. Velázquez.  
Now we'll hear from Congressman Peter King.

**STATEMENT OF HON. PETER T. KING, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW YORK**

Mr. KING. Thank you, Mr. Goodlatte, Chairman Canady, gentlemen of the committee. It's a pleasure to be here with you today. It's an even greater pleasure to be here with my friend Nydia Velázquez. As usual, we disagree strongly on this issue, but I certainly respect her view.

Mr. Chairman, the first 190 years of our country, immigrants came to this country, as Congressman Porter said, from all over the world. They maintained their own ethnic traditions, their own culture, their own religion, their own holidays, their own beliefs. But the one thing that bound us together was the English language.

Immigrants came and they learned to speak English. They were able to do it. In my own neighborhood in New York City, which was right next to Congresswoman Velázquez's current district, we had a number of kids who were Jewish, Italian, Polish. They all managed to learn the English language. The proudest moment for their parents was when they became citizens. These people were able to take part in democracy. They were able to become part of the American mainstream. And they were able to do that because they learned the English language.

By having a system where we give people a false crutch or the false security of their native language, what we are doing to them is consigning them to permanent ghettos, psychological ghettos, mental ghettos and physical ghettos. All it does is deny people the opportunity to move forward. If we don't encourage people, if we don't give them the incentive to learn English, if we give them this false security, what we're going to do is preclude them, I believe, from becoming real participants in democracy. They will remain, perhaps, in their own districts. They will perhaps remain with their own ethnic group. They will not become part of the wide range of American democracy.

So now we have a system in New York City where we have to have Chinese ballots. I think the cost is about \$700,000, which I guess for Mayor Giuliani is not a major cost, but still, is a cost. But the fact is, what are we going to do? We are going to have ballots in one language after another. We're going to deny people, again, the opportunity to come together as Americans. We need that common glue. We need something that binds us together. I just think that this, as Congressman Porter said, this type of legislation which began with bilingual education and then was extended to the Voting Rights Act, was well intended but it's not serving the purpose. It is just dividing us as a nation.

I, myself, have introduced a bill to make English the official language of the country. But I am also a very very proud cosponsor of Congressman Porter's bill, H.R. 351. If we are going to move for-

ward together as one Nation rather than a balkanized federation of independent ethnic groups, we have to come together with one language. There is no right, there's no privilege more essential than that of voting. If people have to have a familiarity with English to become citizens, they should certainly have enough familiarity with it to be able to cast an intelligent vote. So I strongly support Congressman Porter's bill.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF HON. PETER T. KING, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF NEW YORK

Mr. Chairman, I would like to commend you for holding this hearing on the bilingual voting requirements of the Voting Rights Act of 1965. As the sponsor of the National Language Act (H.R. 1005), which declares English the official language of the United States and repeals the mandate for bilingual ballots, I appreciate the opportunity to present testimony this morning. In addition to introducing H.R. 1005, I am proud to be a cosponsor of the Bilingual Voting Requirements Repeal Act (H.R. 351) introduced by our colleague John Porter.

For the first 190 years of our nation's history, millions of immigrants came to our shores knowing that they were expected to learn English so that they and their children could break free from the shackles of the ghetto and claim their share of the American Dream. And it worked. The great American mosaic of countless immigrant cultures, traditions and beliefs bound together by the glue of a common language became the envy of the world.

Unfortunately, the purveyors of political correctness have been successful in creating and protecting big government programs that dissuade new immigrants from learning English. From costly bilingual education programs to conducting citizenship ceremonies in languages other than English, the Federal government has spent billions on linguistic welfare programs which have hindered immigrants from assimilating into American society.

Although it was enacted in 1965, the Voting Rights Act did not mandate that ballots be printed in languages other than English until 1975. The 1975 amendments required that bilingual ballots and interpreters be available in counties where 5% of the voting population had limited English proficiency. More recent changes to this law required that bilingual ballots and interpreters be provided in counties where more than 10,000 residents speak the same foreign language and are not English proficient. It is important to note that the voting population is based on the most recent Census and may include individuals who are illegal immigrants who are not eligible to vote.

As required by Federal law, the ballot in my home county of Nassau on Long Island, the instructions and titles of elective offices appear both in English and Spanish. However, in nearby New York City, ballots appear in English, Spanish and Chinese. It is expected that Korean language ballots will soon become available. New York City election officials have discovered that not only is this mandate costly, but it is vulnerable to error. For example, the Chinese character for "no" was erroneously translated as "yes" on the ballot in 1993. It is estimated that approximately \$700,000 will be spent by New York City this year to comply with the bilingual requirements of the Voting Rights Act.

Perhaps the most convincing argument for repealing the bilingual ballot requirement relates to the basic requirements for citizenship. In 1950, Federal law was amended to require that naturalized citizens "demonstrate an understanding of the English language, including the ability to read, write and speak words in ordinary usage in the English language." Since only U.S. citizens are eligible to vote, and legal immigrants who became naturalized citizens since 1950 can be expected to be at least somewhat literate in English, there is no reason to mandate bilingual ballots. That is why I introduced the National Language Act and cosponsored H.R. 351.

The English language is, and has always been, the common bond that unites us. A nation with more than one official language cannot function effectively or with any degree of equality. Government mandated bilingualism, whether it be in the classroom or at the ballot box, creates two societies that are both separate and unequal.

I look forward to working with you, Mr. Chairman, and the other members of the Constitution Subcommittee to address this unnecessary and costly Federal mandate on the states.

Mr. GOODLATTE. Thank you, Mr. King. We have been joined now by Congressman Bob Livingston, Chairman of the Appropriations Committee.

Congressman Livingston, welcome. You have been introduced earlier. Any written statement you have will be made a part of the record. We welcome your remarks for 5 minutes.

**STATEMENT OF HON. BOB LIVINGSTON, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF LOUISIANA**

Mr. LIVINGSTON. Thank you very much, Mr. Chairman. I will hopefully get through this within the 5 minutes.

I support H.R. 351, the Bilingual Voting Requirements Repeal Act, because I believe that the measure is long overdue. I hope that the committee will favorably report it to the House.

It puts an end to the unfunded mandate of requiring States to print ballots in different languages. Since 1975, States with certain populations of language minorities are required to print ballots in the native language of the minority. While there are some who believe the law is worthy and necessary, the measure is dividing our Nation along ethnic lines. In addition, it is also unduly burdening the States and opening the system to potential fraud.

This has been throughout its history, an English speaking nation. Most citizens understand this, and in fact support the realities. Since 1906, all U.S. citizens are required by law to be able to comprehend English. Since 1950, all U.S. citizens must demonstrate an understanding of English, including an ability to read, write and speak words in ordinary English usage.

Opponents of H.R. 351 claim that certain ethnic groups do not understand English and therefore must be accommodated. But since the 1960's, the Federal Government has been spending millions of taxpayer dollars on programs to teach English to non-English speaking individuals. In addition, the Federal Government mandates that States and local governments also spend taxpayer money to teach English to non-English speaking individuals. In 1995 alone, the Federal Government spent over \$200 million on such programs. When you include State and local mandated spending for such programs, the amount skyrockets to \$8 billion.

Why do we spend such money on bilingual education and mandate the States to do the same and require States to spend money to print bilingual ballots? Well, Mr. Chairman, something obviously isn't working. While this is not the time or place to talk about bilingual education, it is becoming more and more evident that teaching children in their native foreign languages actually impedes or hinders their ability to learn English and hence, their ability to be assimilated in the job market of the United States of America. Printing ballots in foreign languages does the same. I think that by perpetuating an already bad problem by officially recognizing language other than English does as well.

If the need is truly there for language assistance at the ballot box as some have argued, are there not more effective ways to address the problem rather than simply mandating the States to print ballots in other languages? I believe the need can be addressed by first encouraging English. It's political organizations, interest groups, friends and family who must help in that endeavor.

Additional help can be also found to address specific language problems. Finding help at the election time is a little like looking for hamburgers at McDonalds. You are bound to find a few.

The issue of voter fraud disturbs me greatly. I fear bilingual ballots only help those who resolve to steal elections. According to the 1990 census, California has 4.4 million noncitizens. Florida has 949,000 noncitizens. Texas has over a million noncitizens, and New York has 1.5 million noncitizens. In 1982, a Chicago grand jury reported that many aliens register to vote so that they can obtain documents identifying them as U.S. citizens. The jury stated, "These aliens use their voters cards to obtain myriad benefits, from Social Security to jobs within the Defense Department."

Unfortunately, many of these same individuals also vote. With the ballots printed in their native languages, it is easy for crooks to convince these individuals, many of whom are unaccustomed to U.S. election laws, that it's OK to vote.

I can add to the subject of people who try to steal elections hits particularly close to home. I lost my first congressional race to an opponent who was later convicted and jailed for voting irregularities in that election. I was fortunate to have and win another chance at election. How many future candidates will find themselves losing elections because of election fraud.

Our Nation has long valued immigrants. History reflects their enormous contribution to American society, culture, economic prosperity. While we have cultural differences, we have a common bond, the English language. Let's see to it that the bond is not forgotten at the ballot box.

Again, I just stress children can assimilate into this economy if they speak English. They can not if they are protected from the English language. I speak from personal experience. I adopted a child, a foreign child, when she was almost 7 years old. She is fully assimilated. I tried to keep her cognizant of her foreign language, which was Chinese. We kept her in Chinese school on Saturdays for 5 years until she finally looked at me square in the eye and she said, "Look, I'm an American. I want to speak like an American. Forget this stuff." And she doesn't speak a word of Chinese, unfortunately. I wish that she would speak both languages, but that wasn't to be. But she's my daughter. She's 21 years old, and she's beautiful and she's intelligent, and she is an American.

[The prepared statement of Mr. Livingston follows:]

PREPARED STATEMENT OF HON. BOB LIVINGSTON, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF LOUISIANA

Mr. Chairman, I appreciate having this opportunity to expressing my support for H.R. 351, the "Bilingual Voting Requirements Repeal Act." This measure is long overdue and I hope the Committee will favorably report it to the full House.

H.R. 351 puts an end to the unfunded mandate of requiring states to print ballots in different languages. Since 1975, states with certain populations of language minorities are required to print ballots in the native language of the minority. While there are some who believe that the law is worthy and necessary, the measure is dividing our nation along ethnic lines. In addition, it is also unduly burdening the states and opening the system to potential fraud.

We are an English speaking nation. Most citizens understand this and, in fact, support this reality. Since 1906, all U.S. citizens are required by law to be able to comprehend English. And, since 1950, all U.S. citizens must "demonstrate an understanding of English, including an ability to read, write and speak words in ordinary English usage."



Opponents of H.R. 351 claim that certain ethnic groups do not understand English and therefore must be accommodated. Well, since the 1960's, the federal government has been spending millions of taxpayer dollars on programs that teach English to non-English speaking individuals. In addition, the federal government mandates that states and local governments also spend taxpayer money to teach English to non-English speaking individuals. In 1995 alone, the federal government spent over \$200 million on such programs. And, when you include state and local mandated spending for such programs, the amount skyrockets to \$8 billion!

Why do we spend millions of taxpayer dollars on bilingual education—and mandate that states do the same—and require states to spend money to print bilingual ballots?

Well, Mr. Chairman, something is obviously not working. While this is not the tie or the place to talk about bilingual education, it is becoming more and more evident that teaching children in their native, foreign language hinders their ability to learn English. Printing ballots in foreign languages does the same. Let's not perpetuate an already bad problem by officially recognizing languages other than English.

If the need is truly there for language assistance at the ballot box—as some have argued—are there not other more effective ways to address the problem rather than simply mandating that states print ballots in other languages? I believe the need can be addressed by first encouraging English! Candidates, political organizations, interest groups, friends and family must help in this endeavor. Additional help can also be found to address specific language problems. Finding help at election time is a little like looking for hamburgers at McDonalds—you're bound to find some.

The issue of voter fraud disturbs me greatly. I fear bilingual ballots only help those who resolve to steal elections. According to the 1990 Census, California has 4.4 million non-citizens, Florida has 949 thousand non-citizens, Texas has over a million non-citizens, and New York has 1.5 million non-citizens. In 1982, a Chicago grand jury reported that "... many aliens register to vote so they can obtain documents identifying them as U.S. citizens. . . . These aliens use their voter's card to obtain myriad benefits, from Social Security to jobs with the Defense Department." Unfortunately, many of these same individuals also vote. With the ballots printed in their native languages, it is easy for crooks to convince these individuals—many of whom are unaccustomed to U.S. election laws—that it is OK for them to vote.

I can add that the subject of crooks who try to steal electronics hits particularly close to home. I lost my first Congressional race to an opponent who was later convicted and jailed for voting irregularities to that election. I was fortunate to have, and win, another chance at election. How many future candidates will find themselves losing an election because of fraud?

Our nation has long valued immigrants. History reflects their enormous contribution to American society, culture, and economic prosperity. And, while we all have cultural differences, we all have a common bond—the English language. Let's see to it that that bond is not forgotten at the ballot box.

Mr. GOODLATTE. Thank you, Mr. Livingston.

My understanding is that Congressman Lipinski is not going to be able to join us, so we'll go onto the next panel.

[The prepared statement of Mr. Lipinski follows:]

PREPARED STATEMENT OF HON. WILLIAM O. LIPINSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am here today to testify on behalf of my good friend, John Porter's, legislation H.R. 351, the Bilingual Voting Requirements Repeal Act of 1995. This bill repeals Section 203 and Section 4(f) of the Voting Rights Act of 1965. I commend my colleague for taking the initiative to repeal such a burdensome federal mandate as providing bilingual ballots.

The number one reason for discontinuing the practice of providing bilingual ballots is that they don't work. When the practice of issuing ballots in more than one language began, it was with the understanding that now minority language adults would have the opportunity to take full advantage of their U.S. citizenship by participating in the election process. However, since the institution of the multi-lingual ballot, U.S. Census figures confirm that minority-language voter participation rates have declined. For example, only 32 percent of eligible Hispanic voters are registered. What the figure doesn't tell us is how many of the 32 percent only speak Spanish. For all we know, the 32 percent of eligible Hispanic voters could be fluent in English.

All nationalized U.S. citizens have to have a working knowledge of English to qualify for citizenship. In 1950, Congress added this requirement stating that persons who wish to become citizens must "demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language." If a person can pass these requirements, surely he or she can read a ballot.

A 1990 poll reported in the *Houston Chronicle* found that 87 percent of Hispanics surveyed thought it was their "duty to learn English." That same year, a *San Francisco Chronicle* poll found that 90 percent of Filipino Americans, and 78 percent of Chinese-Americans favored making English the official language. Furthermore, in 1984, 70 percent of California voters supported an initiative asking Congress to provide ballots only in English.

Americans are traditionally welcoming of immigrants. And statistics show that most immigrants want to learn the language of this, their adopted country so that they can take advantage of the opportunities this nation has to offer. National, government enforced bilingualism is alien to the history of this nation. Mandating bilingual voting materials will only reinforce language separation and retard natural tendencies to assimilate.

Mr. Chairman, these numbers show that native-born and naturalized Americans alike, do not support dual language initiatives. Not only do the numbers show it, actions in the State legislatures further reveal the sentiments of our constituents. Voters and legislators in 18 states have already passed laws designating English as the official language. Now we in Congress need to take this message and act on it.

I urge my I colleagues to just say no! No to bilingual ballots. Repeal Section 203 and 4(f).

Thank you Mr. Chairman.

Mr. GOODLATTE. We thank all of the participants in this panel for your contribution at this hearing.

We started before I think any of the other Members were here, other than Congressman Canady. If any other Members have statements to submit for the record, we certainly would take those at this time.

[The prepared statement of Mr. Flanagan follows:]

PREPARED STATEMENT OF HON. MICHAEL PATRICK FLANAGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, thank you for holding this hearing today on H.R. 351, the "Bilingual Voting Requirements Repeal Act" introduced by my fellow Illinois colleague, Congressman John Porter. I am anxious to hear John's testimony on behalf of his bill as well as the testimony of our other distinguished colleagues and panelists that are here today. I also want to note and welcome in particular our other panelists from Illinois, our colleague Congressman William O. Lipinski and Ronald Rotunda, the Albert E. Jenner, Jr. Professor of Law at the University of Illinois.

As a cosponsor of H.R. 123, the "Language of Government Act" which statutorily declares English to be the official language of the United States, I firmly believe that English is the common thread that unites our society. At the same time, however, we must be absolutely certain that whatever legislative action we take does not undermine our citizens of language minorities' right to vote. With that view in mind, I look forward to today's most important hearing.

Mr. GOODLATTE. Testimony from our second panel will begin with John Silber, president of Boston University. Dr. Silber was appointed by President Reagan to the National Bipartisan Commission on Central America in 1983, and was the Massachusetts Democratic gubernatorial nominee in 1990. Earlier this year, Governor William Weld chose him to head the Massachusetts Board of Education.

Also joining us today is Karen Narasaki. Ms. Narasaki is the executive director of the National Asian Pacific American Legal Consortium. She serves on the Executive Committee of the Leadership Conference on Civil Rights as chairperson of its Compliance and

Enforcement Committee and also chairs the National Network Against Anti-Asian Violence.

Then we will hear from Ronald Rotunda. Professor Rotunda is the Albert E. Jenner, Jr., Professor of Law at the University of Illinois. He is the author of a four volume treatise on constitutional law, and has written over 100 law articles, as well as numerous books pertaining to constitutional law.

Without objection, your full statements will be made a part of the record. Please summarize your testimony in 5 minutes.

Dr. Silber, welcome. We're glad to have you with us today.

#### **STATEMENT OF JOHN SILBER, PRESIDENT, BOSTON UNIVERSITY**

Mr. SILBER. Thank you, Mr. Chairman. I am grateful for the opportunity of testifying on H.R. 351, which is one of the most important bills the House will consider this session.

I speak today as the son of an immigrant. My father came to this country from Germany in 1903 to work as a sculptor on the German pavilion at the St. Louis World's Fair. When the fair closed, he went to look for work. Walking down the street, he saw a sign saying "undertaker." Supposing this to be a literal translation of the German word "unternehmer" meaning "contractor," he went inside, only to find himself surrounded by coffins. At that point, he decided it was time to learn English.

He learned English, and in 1911, he became a citizen. In doing so, he embraced a new country and a new culture. Like all immigrants seeking naturalization, he was required to demonstrate proficiency in English. It would never have occurred to him or to any of the millions of other immigrants speaking many different languages, to seek accommodations such as ballots in their native tongue. He, like them, freely chose to live in a country where the language was English, and he had freely chosen to become an American, not a German-American, but an American.

My father was of course only one of tens of millions of immigrants who have embraced this country. They have been an extraordinarily diverse group, and their diversity has made our gorgeous cultural mosaic what it is. This is our historic tradition.

The 1975 amendments to the Voting Rights Act, by mandating bilingual ballots, abandoned this tradition, thereby making a change of constitutional consequence without amending the Constitution. They amended, in effect, the very concept of the U.S. citizen. It is clear from the naturalization statutes that English is presumed to be the language of U.S. citizens. What else can we conclude from the fact that proficiency in English is required by law for naturalization? The only exception, enacted in 1990, exempts applicants over 55 years of age who have lived in the United States for at least 15 years.

The requirement of English is perfectly reasonable. All the founding documents of this country are in English. Its laws are written in English. Its legislatures transact their business in English. English is nowhere stated to be the official language of the country only because, until very recently, no one doubted that it is.

Citizens who are not proficient in English cannot, in most cases, follow a political campaign and vote with knowledge. They cannot

talk with candidates or petition their representatives. They are in fact citizens in name only and unable through their linguistic limitations to exercise their rights. Providing them with bilingual ballots does not enable them to exercise those rights in any meaningful sense.

Moreover, we should be clear that even though access to bilingual ballots is mandated in something called the Voting Rights Act, this access is not a right. If it were a right, it would be possessed by all citizens. The act makes no attempt to provide this access to all members of linguistic minorities. Access is mandated only for minorities that number more than 10,000 in a jurisdiction or which make up more than 5 percent of the eligible voters. Literally thousands of citizens in smaller linguistic minorities, all equally Americans, are not denied a right. They are denied an accommodation. If they were denied a right, they would be entitled to redress under the 14th amendment. Voting in the United States would then suddenly become an impossibly expensive and chaotic exercise as officials attempted to provide ballots and instructions in hundreds of different languages, some of them not yet reduced to writing. That is what a right to bilingual ballots would require.

In truth, they are only a highly selective accommodation. We must ask, "Are they a desirable accommodation?" Their cost cannot be measured in dollars. They impose an unacceptable cost by degrading the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him.

Much worse, bilingual ballots, by helping to sunder our linguistic unity, move us toward a multicultural, multilingual society. With the single exception of Switzerland, nations with a multilingual society, including Canada, Belgium, India, and Ceylon, have been riven and often bloodied by the competing forces of linguistic nationalism. In contrast, the United States has been unique in that no where else in the world do so many people, spread over such a vast area, speak the same language. Our common language provides the unity which, paradoxically, enables us to understand and cherish our cultural diversity.

Doubtless the 1995 amendments to the Voting Rights Act were well-intentioned. But they are a powerful force to deny American citizens full proficiency in their national language, and thus in their citizenship. Moreover, they insult the members of linguistic minorities by assuming that they can not attain reasonable proficiency in English.

In the last weeks of the Soviet Union, I visited Moscow. I was struck reading my visa application to see that the Soviet Government wanted to know both my citizenship and my nationality. I found this incomprehensible, for as an American, my citizenship and my nationality are one and the same. America is the only Nation that was not founded on ethnicity. We are a Nation based on a set of ideals and allegiance to those ideals, not on the basis of an ethnicity or national origin.

To become a citizen is not the right of any immigrant. To become an American citizen is a privilege which must be earned. Learning the language is one of the requirements for earning that privilege. It is required by law.

The success of America has depended upon making ethnicity a private matter. Our ethnic groups voluntarily celebrate their ethnicity with joyous passion. Irish-Americans honor St. Patrick's Day with a commitment unknown in Dublin. Italian-Americans celebrate the festivals of their saints. Polish-Americans commemorate their weddings with festivities that have become a byword for communal rejoicing. Mexican-Americans celebrate the Cinco de Mayo with music and dance. But all these remain private undertakings. The Government, until recently, has recognized no ethnic group but only Americans.

The 1995 amendments to the Voting Rights Act represent a dangerous experiment in deconstructing our American identity. H.R. 351 is a clear and effective way to terminate this experiment before we lose our American identity and our country. Nothing less is at stake. Thank you.

[The prepared statement of Mr. Silber follows:]

PREPARED STATEMENT OF JOHN SILBER, PRESIDENT, BOSTON UNIVERSITY

Mr. Chairman, I am grateful for the opportunity to testify on H.R. 351, which is one of the most important bills the House will consider in this session.

I speak today as the son of an immigrant. My father came to this country from Germany in 1903, to work as a sculptor on the German pavilion at the St. Louis World's Fair. This work completed, he stayed on to sell ice-cream at the fair, and when the fair closed he went to look for work. Walking down the street, he saw a sign saying "Undertaker." Supposing this to be a literal translation of the German word "Unternehmer," meaning "contractor," he went inside and was surprised to find himself in a room full of coffins. Embarrassed, he concluded that it was time to learn English.

In St. Louis, of course, there was a vigorous German community, and he could have found employment there without knowing more English. But, as he often said, he came to America because it was the land of a thousand possibilities, and without English these would have been reduced to very few. He learned English, and in 1911, he became a citizen. In doing so, he embraced a new country and a new culture. Like all immigrants seeking naturalization, he was of course required to demonstrate proficiency in English. It would never have occurred to him or to any of the millions of other immigrants speaking many different languages to seek accommodations such as ballots in their native tongue. He, like them, had freely chosen to live in a country where the language was English. He had freely chosen to become an American—not a German-American but simply an American.

My father was, of course, only one of the tens of millions of immigrants who have embraced this country. They have been an extraordinarily diverse group, and their diversity has made our gorgeous cultural mosaic what it is. Each immigrant, having chosen to be a American, took on a new identity and by so doing won the right to become that identity. Immigrants become new people, and by their presence, America becomes a new country.

This is our historic tradition. The 1975 amendments to the Voting Rights Act, by mandating bilingual ballots, abandoned this tradition, thereby making a change of constitutional consequence, amending in effect the very concept of United States citizenship. It is clear from the naturalization statutes that English is presumed to be the language of U. S. citizens. What else can we conclude from the fact that proficiency in English is required for naturalization? The only exception, enacted in 1990, exempts applicants over 55 years of age who have lived in the United States for at least 15 years.

For the overwhelming majority, the requirement of English is perfectly reasonable. All the founding documents of this country are in English. Its laws are written in English, and its legislatures transact their business in English. English is nowhere stated to be the official language of the country because until very recently no one doubted that it is.

Citizens who are not proficient in English cannot, in most cases, follow a political campaign, talk with candidates, or petition their representatives. They are, in fact, citizens in name only and are unable through their linguistic limitations to exercise their rights. Providing them with bilingual ballots does not enable them to exercise those rights in any meaningful sense.



Moreover, we should be clear that even though access to bilingual ballots is mandated in something called the Voting Rights Act, this access is not a right. If it were a right, it would be possessed by all citizens. The Act makes no attempt to provide this access to all members of linguistic minorities; access is mandated only for minorities that number more than 10,000 in a jurisdiction, or which make up more than 5% of the eligible voters. The thousands of citizens in smaller linguistic minorities—all equally Americans—are not denied a right; they are denied an accommodation. If they were denied a right, they should be entitled to redress under the equal protection clause of the 14th Amendment. And voting in the United States would suddenly become an impossibly expensive and chaotic exercise as officials attempted to provide ballots and instructions in hundreds of different languages, some of them not yet reduced to writing. That is what a right to bilingual ballots would require.

In truth, they are only a highly selective accommodation. And we must ask "Are they a desirable accommodation?" Their cost cannot be measured in dollars. They impose an unacceptable cost by degrading the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him.

Much worse, bilingual ballots, by helping to sunder our linguistic unity, move us towards a multilingual society. With the single exception of Switzerland, nations with multilingual societies have been riven by the competing forces of linguistic nationalism. Just to the north of us, Canada is being torn apart by linguistic difference. In recent decades, Belgium has seen bloody rioting between French-speaking and Flemish-speaking citizens. India has suffered from even more serious rioting over language, and the bloody insurgency in Ceylon is driven largely by language differences.

In contrast, the United States has been unique in that nowhere else in the world do so many people spread over so great an area speak the same language. Our common language provides the unity which, paradoxically, enables us to understand and cherish our cultural diversity.

Doubtless the 1975 Amendments to the Voting Rights Act were well intentioned. But they are a powerful force to deny American citizens full proficiency in their national language and thus full citizenship. Moreover, they insult members of linguistic minorities by assuming that they cannot attain reasonable proficiency in English.

As Nathan Galzer has pointed out, "The United States is perhaps unique in the states of the world in using the term 'nation' to refer not to an ethnic group but to all who choose to become Americans." In the last weeks of the Soviet Union, I visited Moscow. I was struck, reading my visa application, to see that the Soviet government wanted to know both my citizenship and my nationality. I found this incomprehensible, for as an American, my citizenship and my nationality are one and the same. America is the only nations that was not founded on ethnicity. We are a nation based on a set of ideals and allegiance to those ideals—not on the basis of an ethnicity or national origin.

In consequence, immigrants from any nation whatever, and from whatever linguistic background, become Americans when they choose to become Americans and participate in that original contract between our government and its citizens. Becoming citizens is their voluntary act.

To become a citizen is not the right of any immigrant. To become an American citizen is a privilege which must be earned, and learning the language is one of the requirements for earning the privilege.

The success of America has depended upon making ethnicity a private matter. And our ethnic groups voluntarily celebrate their ethnicity with joyous passion. Irish-Americans honor St. Patrick's Day with a commitment unknown in Dublin; Italian-Americans celebrate the festivals of their saints; Polish-Americans commemorate their weddings with festivities that are a byword for communal rejoicing. Mexican-Americans celebrate the Cinco de Mayo with music and dance.

But these remain private undertakings. The government, until recently, has recognized no ethnic groups but only Americans. The 1975 Amendments to the Voting Rights Act represent a dangerous experiment in deconstructing our American identity. H.R. 351 is a clear and effective way to terminate this experiment before we lose our country. Nothing less is at stake.

Mr. GOODLATTE. Thank you, Dr. Silber.

Ms. Narasaki, welcome. Please give us your statement. Thank you.

**STATEMENT OF KAREN K. NARASAKI, EXECUTIVE DIRECTOR,  
NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM**

Ms. NARASAKI. Thank you, Mr. Chairman, for inviting me to testify on behalf of the National Asian Pacific American Legal Consortium. We are affiliated with three regional civil rights organizations that have over two decades of experience in safeguarding the voting rights of Asian Pacific Americans.

I would like to start by saying that this is not about language. It's about a history of discrimination in voting. H.R. 351 would eliminate bilingual voting assistance provisions for Americans of Asian, Hispanic, and Native American descent. The sections make the voting booth accessible to limited English proficient citizens at minimal cost and administrative burdens to State and local officials. Repeal of these sections will eliminate the ability of over 1 million citizens to fully exercise their right to vote.

The language assistance provisions were added in the 1970's in response to clear congressional findings that language minority citizens of Asian, Hispanic, and Native American descent had been systematically denied their right to vote due to pervasive discrimination. Less than 4 years ago, Congress reviewed, reauthorized and strengthened these provisions with overwhelming bipartisan support, receiving 236 votes in the House, 75 in the Senate, and President George Bush signed it quickly upon reauthorization.

It was only with its reauthorization that the law effectively covered Asian Pacific Americans outside Hawaii for the first time. It is no secret that the history of this country's laws has been fraught with racial bias against Asians. For example, Asian immigrants were not allowed to become naturalized citizens until 1952, solely because of their race. Without citizenship status, Asians were barred from participating in local, State and National elections for over one and a half centuries.

These language assistance requirements ensure access to the ballot. For example, when New York City first provided ballots in Chinese, an elderly Chinese-American went to the polls for the first time, although he had been a citizen for nearly 20 years.

I must disagree with Mr. Silber. These citizens do follow what happens politically. There are many community papers that follow what Members here do very closely, and follow the issues that are important to their community. Unfortunately, they are not able to exercise this knowledge without the bilingual ballots.

In Oakland, CA, a Chinese-American grandmother brought her grandson with her to watch her to register to vote for the first time because she wanted to teach him the importance of voting. She was only able to register when bilingual registration was made available.

Section 203 protects the voting rights of almost a quarter of a million Asian-Americans. Our naturalization laws recognize the contributions of long-time elderly immigrants and permit them to naturalize without English fluency. In addition, some new citizens need assistance as they made the transition to English. Even native English speakers like myself sometimes have difficulty understanding the complicated electoral issues that are laid out in the ballot—I had voted in California for 4 years, and I can tell you it takes hours just to go through the voting manual. Voting can be

intimidating to those for whom English is a second language. Where a majority is also illiterate, which is one of the requirements for section 203 coverage, these difficulties can be insurmountable.

Only nine counties in three States are required to provide assistance for Asian languages. These three areas cover almost 40 percent of the Nation's Asian population. Three New York boroughs, with almost half a million Asians. Two counties in northern California, with 400,000. L.A. with 1 million. Orange County with a quarter million. Three counties in Hawaii that are covered for both Filipino and Japanese languages.

Three years after enactment of the 1992 amendments, language barriers and meaningful participation and inclusion in the political process by Asian Pacific Americans are slowly becoming dismantled with implementation. According to the Asian American Legal Defense Education Fund, in the 1994 general elections, 31 percent of all Asian voters polled indicated that they use the election materials translated into Chinese. According to the Asian Law Caucus in San Francisco, 14 percent of the voters polled use the Chinese translated materials. In L.A. County, the Asian Pacific American Legal Center found that the use of bilingual voting materials increased every year as citizens became more aware of their availability.

These numbers demonstrate that voters need and use this assistance, and that increasing numbers of Asian citizens are exercising their right to vote, as contemplated by the act. The provisions require covered States or political subdivisions to meet language assistance only if strict threshold population tests are met. The formulas used to determine coverage strike a balance so that jurisdictions are not required to provide assistance unless there is a significant population in need.

While offering language assistance may entail some additional expense, it does not increase election costs significantly. For example, San Francisco provided language assistance in both Chinese and Spanish with overall costs not exceeding four percent of the election budget. In L.A. it was less than 1 percent.

In conclusion, section 203 seeks to redress the low voter registration rates of Asian-Americans that result from language barriers and other discrimination. It is estimated that only 53 percent of all Asian-American citizens were currently registered to vote in 1994, compared to 69 percent non-Hispanic whites. Today, Asian-Americans are 10 percent of California's population, but only 2 of the 52 of the Members of Congress and only 1 of the 80 members of State assembly are Asian. In New York, Asians consist of 6.7 percent of the city's population, yet no Asian has yet been elected to the city council.

Section 203 is only beginning to work for Asians, and repeal will disenfranchise the community. Removing the barriers to political participation ensures that the newest Americans feel included and become part of our democratic process. It is disturbing to hear Congressman King value the extermination of rats over this right, as he has in his written testimony. I would add that we all watched with great pride when we saw South Africa's citizens voting. They had to have pictures on their ballot, and no one questioned their ability to select and elect their officials.

The right to vote is fundamental. It is the mechanism by which all other rights are protected. Language assistance works and it's still needed by limited English proficient citizens. We all benefit as a nation when voters are fully informed, when they understand the ballot, and importantly, when they exercise their right and their duty to vote. Thank you.

[The prepared statement of Ms. Narasaki follows:]

PREPARED STATEMENT OF KAREN K. NARASAKI, EXECUTIVE DIRECTOR, NATIONAL  
ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

Mr. Chairman, thank you for inviting me to testify on behalf of the National Asian Pacific American Legal Consortium (the "Consortium"). The Consortium is a nonpartisan, nonprofit organization whose mission is to advance and protect the legal and civil rights of the 8.8 million Asian Pacific Americans across the country.

The Consortium is affiliated with the Asian American Legal Defense and Education Fund (AALDEF) in New York, the Asian Law Caucus (ALC) in San Francisco, and the Asian Pacific American Legal Center of Southern California (APALCSC) in Los Angeles. Each of these regionally based civil rights organizations have almost two decades of experience in promoting and safeguarding the voting rights of Asian Pacific Americans. The Consortium and its Affiliates have been active in redistricting matters, naturalization and voter registration, voter education, and the shaping and enforcement of voting rights legislation, including the National Voter Registration Act, and Section 203 of the Voting Rights Act of 1965, as amended.

Nearly four years ago, the Consortium and AALDEF submitted testimony to the House Committee on the Judiciary in support of the reauthorization of Section 203 and the Voting Rights Act Language Assistance Amendments of 1992. Today, on behalf of the Consortium and its Affiliates, I urge the Congress not to repeal this important legislation, thereby turning back the clock on the voting rights of American citizens of Asian, Hispanic and Native American descent.

H.R. 351, the "Bilingual Voting Requirements Repeal Act of 1995," authored by Representative John Edward Porter (R-IL), would eliminate bilingual voting assistance provisions for single-language minorities available under Section 4(f) and Section 203 of the Voting Rights Act of 1965 (the "Act"). Repeal of these sections of the Act will adversely impact the ability of over one million citizens to exercise their constitutional right to vote.

This testimony covers the background of the voting assistance provisions of the Act, the effectiveness of Section 203 in making the voting booth accessible to limited-English proficient Asian Pacific American citizens, how Section 203 provides this access at minimal costs and administrative burdens to State and local election officials, and why it is so important to preserve the language assistance required by Sections 4(f) and 203 of the Act.

#### I. BACKGROUND

The Voting Rights Act of 1965 was amended in 1975 to provide for language assistance in voting. The language assistance provisions were in response to Congressional findings that certain language minority citizens had been systematically denied their right to vote due to pervasive discrimination, which was manifested as exclusionary voting procedures (e.g., English-only elections and literacy tests) and unequal educational opportunities.<sup>1</sup> The provisions require covered jurisdictions, which may be States or political subdivisions (defined by the Department of Justice implementing regulations as counties or parishes)<sup>2</sup> to provide language assistance in voting if certain threshold population tests are met. Covered jurisdictions must provide "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots . . . in the language of the applicable minority groups as well as in the English language."<sup>3</sup>

##### A. Section 4(f)

Section 4(f) is linked to the Act's provisions that target jurisdictions with histories of preventing African Americans and other minorities from voting through the use of exclusionary "tests or devices" such as literacy tests. Under the provisions of this section, an English-only election constitutes an exclusionary "test or device" for which the special remedy of language assistance is required.

The formula to determine coverage under this section is fairly limited. A State or political subdivision is covered by Section 4(f) if:

(i) over 5% of the voting-age citizens were, on November 1, 1972, members of a single language minority group; (ii) registration and election materials were provided only in English on November 1, 1972; and (iii) less than 50% of citizens of voting age were registered to vote or voted in the November 1972 Presidential election.<sup>4</sup>

This section is subject to many of the general provisions of the Act, including the requirement that any changes in voting procedures in a covered jurisdiction be precleared by the U.S. Department of Justice before they are implemented. Jurisdictions subject to Section 4(f) include the States of Alaska, Arizona, and Texas, as well as counties in California, Florida, Michigan, New York, North Carolina, and South Dakota.<sup>5</sup> In 1982, Congress extended authorization of Section 4(f), along with most of the other provisions of the Act, until 2007.

#### *B. Section 203*

Section 203 offers the same remedial measures as Section 4(f), but with a slightly different purpose and scope. Section 203 is expressly predicated upon the rights guaranteed by the Fourteenth and Fifteenth Amendments (i.e., equal protection and the right to vote without regard to race, color, or previous condition of servitude, respectively). To satisfy its purpose, Section 203 prohibits discriminatory practices and procedures that effectively exclude language minorities from participating in the electoral process and provides for appropriate remedies. Section 203 defines "language minorities" or "language minority group" as persons who are American Indian (Native American), Asian American, Alaskan Natives, or of Spanish heritage.<sup>6</sup> The discriminatory practices included, among other things, unequal educational opportunities resulting in high illiteracy rates and low voter participation.<sup>7</sup>

Perhaps most importantly, Section 203 provides dynamic methods of determining whether a jurisdiction must provide language assistance. Unlike Section 4(f), Section 203 coverage is not based upon a one-time finding of discriminatory voting practices in a particular election year. Rather, after each decennial census count, States and political subdivisions move into and out of Section 203 coverage depending upon the demographic changes in the voting population of the jurisdiction. The formulas used to determine coverage strike a balance so that jurisdictions are not required to provide bilingual voting assistance unless there is a significant population of single language minorities.

Less than four years ago, Congress passed the Voting Rights Language Assistance Act of 1992 (the "1992 Amendments") with overwhelming bipartisan support, receiving 236 votes in the House of Representatives and 75 in the Senate.<sup>8</sup> At the urging of a broad-based coalition of ethnic, civil rights, and community-based voter registration organizations,<sup>9</sup> then President George Bush quickly signed the Amendments into law on August 26, 1992.

Congress reauthorized Section 203 for fifteen years, to 2007, and expanded its scope by adopting additional coverage formulas.<sup>10</sup> Prior to 1992, Section 203 prohibited English-only elections and required language assistance only in those jurisdictions, determined by the Director of the Census, where:

(i) more than 5% of the voting age citizens are [a] members of a single language minority and [b] do not speak or understand English adequately enough to participate in the electoral process; and (ii) the illiteracy rate of this group is higher than the national illiteracy rate.<sup>11</sup>

With the 1992 Amendments, Section 203 coverage now also exists where the illiteracy rate of the group in question is higher than the national illiteracy rate and:

(ii) more than 10,000 of the citizens of voting age of such political subdivisions are members of a single language minority and are limited English proficient; or

(iii) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaskan Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient.<sup>12</sup>

The additional method of calculating coverage with a population benchmark number addressed the inequities created by applying the 5 percent formula to counties of vastly different sizes. It ensured that all jurisdictions with numerically large limited-English proficient populations, would be covered by Section 203. The coverage formula for Native Americans ensured that all parts of a reservation were covered even if parts of the reservations fell into different counties.



## II. THE LANGUAGE ASSISTANCE REQUIREMENTS OF SECTION 203 WORK AND ARE THE KEY TO MAKING THE VOTING BOOTH ACCESSIBLE FOR MANY CITIZENS

### A. Section 203 Protects the Voting Rights of Almost a Quarter Million Asian Americans

Congress has found that "Limited-English proficiency is a serious barrier to the political participation of many Asian Americans."<sup>13</sup> Current limited-English proficient Asian Pacific American citizens need the basic voting language assistance guaranteed by Section 4(f) and Section 203. Some native born citizens are limited-English proficient primarily because of the denial by State and local governments of equal educational opportunities and the failure to comply with the Bilingual Education Act requirements. Denying language assistance to them is comparable to the application of prohibited literacy tests for voting.

Proponents of H.R. 351 argue that naturalized citizens have demonstrated their ability to speak English when they naturalized, so voting language assistance is unnecessary. However, the level of fluency needed to pass the citizenship test does not translate into the ability to comprehend complex ballot initiatives and procedures. Furthermore, the naturalization laws recognize the contributions of long-time elderly immigrants to American society and permit these immigrants to qualify for naturalization without passing the English requirements if they are over 65 and have been permanent residents for at least 20 years.<sup>14</sup> Thus, voting language assistance may be invaluable to many elderly limited-English proficient naturalized citizens. For example, when New York City first provided ballots in Chinese, an elderly Chinese American went to the polls for the first time although he had been a citizen for nearly 20 years.

In addition, younger limited-English proficient naturalized citizens need assistance as they make the transition from their native languages to English. Many native English-speaking citizens have difficulty understanding complicated referenda and other electoral issues, so these difficulties would certainly present barriers to those for whom English is a second language. Where a majority of Asians, Native Americans, or Hispanics in a county are illiterate (which is one of the factors for Section 203 coverage), these difficulties can be insurmountable. Without language assistance in voting, discrimination against single language minorities, Asians as well as others, at the ballot box will continue.

Prior to the reauthorization and amendment of Section 203, no Asian Pacific American community in the contiguous United States was afforded the benefits of Section 203 language assistance. This was despite the fact that from 1980-1990 the Asian Pacific American population increased by 108 percent to over 7.5 million persons.<sup>15</sup> According to the 1990 Census, a half million Asian Pacific Americans reside in New York City alone, and 2.85 million Asian Pacific Americans live in California, representing 40 percent of the U.S. Asian Pacific American population. In fact, Los Angeles County is home to almost one million Asian Pacific Americans.<sup>16</sup>

It was estimated that approximately 235,000 limited-English proficient Asian Pacific Americans would be covered by Section 203 after enactment of the 1992 Amendments. Three counties in New York (Queens, King and New York), and three counties in California (San Francisco, Alameda and Los Angeles) are required to provide bilingual assistance and voting materials in Chinese. Los Angeles, California is also required to provide such assistance in Japanese, Vietnamese, and Tagalog. Orange County, California is required to provide assistance in Vietnamese, two counties in Hawaii provide assistance (one in Ilocano or Tagalog (Philippine languages), and the other in Japanese).

Three years after enactment of the 1992 Amendments, language barriers to meaningful participation and inclusion in the political process by limited-English proficient Asian Pacific Americans have been slowly dismantled under the implementation of Section 203. Consortium Affiliates, AALDEF and ALC, conducted exit polls in key covered jurisdictions for the November 8, 1994 general elections. According to AALDEF, the percentage of limited-English speaking Chinese Americans in New York City was 48.5 percent, with 31.1 percent of all Asian Pacific Americans voters indicating that they had used the election materials translated into Chinese. According to ALC, in San Francisco, the percentage of limited-English speaking Chinese American voters was 31.9 percent, with 13.6 percent using the Chinese translated voting materials.<sup>17</sup>

In the 1993 New York City mayoral race, 20 percent of Asian Pacific Americans who indicated they were not English proficient also used some form of language assistance.<sup>18</sup> In Los Angeles County, the usage of bilingual voting materials by Asian Pacific Americans has steadily increased each year as cooperative efforts between grassroots voting rights organizations and election officials are made to publicize the availability of assistance. In November 1993, the Los Angeles County Registrar re-

ceived 6,227 requests for bilingual voting materials in Chinese, Japanese, Tagalog, and Vietnamese. By the November 1994 general election, the number of requests had increased to 7,135. Asian Pacific American voters in Los Angeles County made 9,803 requests for bilingual materials for the March 1996 primary election. The rise in requests for bilingual voting materials demonstrates that these voters need and demand this assistance, and that increasing numbers Asian Pacific American citizens are exercising their right to vote.

#### *B. Providing Language Assistance is Not Difficult or Costly*

The cost of implementing Section 203 is modest in relation to the goal of enabling thousands of minority citizens to fully exercise their right to vote. While offering language assistance may entail some additional expense, it does not increase election costs significantly. For example, San Francisco provides language assistance in both Chinese and Spanish with overall costs not exceeding 4 percent of the election budget.

In Los Angeles less than one half of 1 percent of the Los Angeles Registrar's budget was spent in 1995 for bilingual assistance in Asian languages in the consolidated elections, and only 1 percent was spent in the 1994 primary and general elections.<sup>19</sup> This despite the fact that Los Angeles County is currently the only county required to provide assistance in more than two non-English languages. The Government Accounting Office (GAO) examined costs for assistance for the 1984 general elections and found that the average cost for language assistance was 7.6% of the overall election costs.<sup>20</sup> For many counties, the cost was nothing.

Furthermore, local election officials have broad discretion under the Department of Justice regulations to use relatively inexpensive methods. For example, the regulations provide the "use of less costly methods if they are equivalent to more costly methods in their effectiveness."<sup>21</sup> Election officials may also utilize targeting efforts based on the concentration of language minorities in certain precincts, to fulfill their language assistance requirements.<sup>22</sup> The Attorney General's review of these targeting efforts is conducted under fairly generous standards. Language assistance materials provided by mail, and polling place assistance activities meet Section 203 requirements if the targeting by mail or polling place activities are deemed to be "effective" or to provide "an effective opportunity to vote," respectively.<sup>23</sup>

Additionally, our Affiliates report that many community members who are both English proficient and language minorities volunteer to assist their local election officials in disseminating bilingual voting materials and providing oral assistance on voting day. This volunteerism ensures that election officials are not burdened and that everyone's fundamental right to vote is fully exercised.

#### *C. Language Assistance is Targeted at Language Minority Groups Who Have Faced Institutionalized Discrimination Limiting Their Participation in the Electoral Process*

Section 4(f) and Section 203 limit required voting language assistance in voting to Native Americans, Asian Americans, and Hispanic citizens. Congress expressly found in the Act that these groups faced institutionalized discrimination resulting in unequal access to and limited participation in the political process.

It is no secret that the history of this country's laws have been fraught with racial bias against Asians. The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes this country's particularly infamous record on immigration from Asia.<sup>24</sup> Over the next 50 years, anti-Asian sentiment resulted in several other laws which all but ended immigration from Asian and Pacific Island countries.<sup>25</sup> It has been just been one generation since the Chinese Exclusion Act and its progeny were repealed in 1943.<sup>26</sup>

The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were not allowed to become naturalized citizens for over 160 years. A 1790 law allowed only "free white persons" to become citizens. Even after the law was changed in the nineteenth century to include African Americans, similar legislation to include Asian Americans was rejected.<sup>27</sup> The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship solely based on their race and national origin.<sup>28</sup> The last of these laws was not repealed until 1952.<sup>29</sup>

Education is also an area in which Asian Pacific Americans have been historically discriminated against. In 1860, California barred Asians from attending its public schools entirely. After the California Supreme Court ruled that this was unconstitutional, the State set up a system of "oriental" schools and the California Supreme Court upheld the constitutionality of "separate but equal" schools for Asian students in 1906. In 1927, the U.S. Supreme Court upheld the exclusion by Mississippi of Asian students from white schools.<sup>30</sup>

In the early 1970's frustrated Chinese American parents brought a class action suit against the San Francisco Unified School District, alleging that unequal educational opportunities resulted from the District's failure to establish a program to address the limited-English proficiency of students of Asian ancestry. In *Lau v. Nichols*, the U.S. Supreme Court ruled that the District's failure to provide English language instruction was a violation Title VI of the Civil Rights Act of 1964.

It is clear that this long history of discrimination against Asians resulted in unequal access to and limited participation in the political process by Asian Pacific Americans. It was not until 1952 that all Asian immigrants were permitted to be U.S. citizens. Without citizenship, Asians were barred from participating in local, State, and national elections for over 160 years. Many of the Asian Pacific American citizens who were eligible to vote after 1952 faced barriers as a result of the denial of equal educational opportunities by State and local officials.

Today, Asian American business and residential communities are routinely carved up despite the evidence of racial bloc voting. The inability of the Asian American community to protect its interests in redistricting means that the political influence of the Asian American community is weakened.<sup>31</sup> For example, Asian Pacific Americans are 10 percent of the overall population of California, but only two of the 52 member congressional delegation are Asian Pacific American and only one of the 80 member state assembly is Asian Pacific American.

Asian Pacific American citizens exhibit very low overall rates of voter registration. It is estimated that only 53 percent of all Asian Pacific American citizens were registered to vote in 1994, compared to 61 percent of African Americans and 69 percent of non-Hispanic whites. Hispanic citizens matched Asian Pacific American citizens at 53 percent.<sup>32</sup> While Asians are 10 percent of the population in California, they represent only 5 percent of the registered voters and only 3 percent of those who actually vote.<sup>33</sup> In New York City with a 7 percent Asian Pacific American population, an Asian American has yet to be elected to the City Council.

Removing the barriers to political participation ensures that the newest Americans feel included in and become a part of America's democratic process. Section 203 assists Asian Pacific Americans and other language minorities with their integration into the mainstream of America's political life.

### III. CONCLUSION

Repeal of Section 4(f) and Section 203 serves no meaningful purpose. Repeal will only ensure that a significant population of U.S. citizens are disenfranchised again, and that those citizens are prevented from meaningfully exercising their right to vote. This movement backward would be particularly unwarranted at a time when many decry increased levels of voter apathy.

Section 203 seeks to redress the low voter registration rates of Asian Pacific Americans and other language minorities that result from linguistic barriers and the historically discriminatory denial of rights that have prevented Asian Pacific Americans, and others, from full and equal participation in the electoral process. Representatives who support repeal of these provisions are saying they do not want to encourage and assist Asian Americans, Hispanic Americans and Native Americans to vote.

The right to vote is the mechanism by which all other rights are protected. The benefits of language assistance to these citizens and to our nation as a whole clearly outweigh the minimal costs associated with providing language assistance and translated voting materials.

### END NOTES

<sup>1</sup> Section 4(f)(1) of the Act, 42 U.S.C. 1973b(f)(1) (1975); Section 203(a) of the Act, 42 U.S.C. 1973aa-1a(a) (1975).

<sup>2</sup> 28 C.F.R. 55.1, 58 Fed. Reg. 35372 (July 1, 1993).

<sup>3</sup> Section 4(f)(3), 42 U.S.C. 1973b(f)(3) (1975); Section 203(b)(3)(A), 42 U.S.C. 1973aa-1a(b)(3)(A), as amended by the Voting Rights Language Assistance Act of 1992.

<sup>4</sup> Section 4(b), 42 U.S.C. 1973b(b) (1975).

<sup>5</sup> 28 C.F.R. 55, Appendix to Part 55—Jurisdictions Covered Under Sections 4(i)(4) and 203(c) of the Voting Rights Act of 1965, as amended, 58 Fed. Reg. 36516 (July 7, 1993).

<sup>6</sup> Section 203(e), 42 U.S.C. 1973aa-1a(e) (1982).

<sup>7</sup> Section 203(a), 42 U.S.C. 1973aa-1a(a) (1975).

<sup>8</sup> House Vote No. 2319 (July 24, 1992); Senate Vote No. 2180 (August 7, 1992).

<sup>9</sup> The Voting Rights Language Assistance Act of 1992 was supported by the Consortium, the Japanese American Citizens League, the Coalition of Korean American Voters, Inc., the Organization of Chinese Americans, the American Jewish Committee, the League of Women Voters, the Southwest Voter Research Institute, the National Association of Latino Elected and Appointed Officials, the Leadership Conference on Civil Rights, the National Council of La Raza, the National Congress of American Indians, the Mexican American Legal Defense and Edu-

cational Fund, the AFL-CIO, the National Puerto Rican Coalition, the Cherokee Nation of Oklahoma, the Navajo Nation, the American Civil Liberties Union, and many others.

<sup>10</sup> Section 203(b), 42 U.S.C. 1973aa-1a(b), as amended by the Voting Rights Language Assistance Act of 1992.

<sup>11</sup> Section 203(b)(2)(I)(i), 42 U.S.C. 1973aa-1a(b)(2)(I)(i), as amended by the Voting Rights Language Assistance Act of 1992.

<sup>12</sup> Section 203(b)(2)(A)(i)(II), 42 U.S.C. 1973aa-1a(b)(2)(A)(i)(II), as amended by the Voting Rights Language Assistance Act of 1992.

<sup>13</sup> Report for the Senate Committee on the Judiciary, "The Voting Rights Act Language Assistance Amendments of 1992, Report 102-31 S. 102nd Congress 2nd Session, Calendar No. 537, July 2, 1992 at 6, citing U.S. Commission on Civil Rights, "Civil Rights Issues Facing Asian Americans in the 1990s," at 161.

<sup>14</sup> Immigration and Nationality Act, Section 312(b)(3), 8 U.S.C. 1423(b)(3), as added by Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, section 108(a). Also exempted from the literacy test are permanent residents over the age of 50 who had lived in the U.S. for at least 20 years at the time of applying for naturalization, and permanent residents over the age of 55 who had lived in the U.S. for at least 15 years. *Id.* at section 312(b)(2)(B).

<sup>15</sup> The Census Bureau reported in 1995 that the Asian Pacific American population is currently 8.8 million.

<sup>16</sup> See L. Shinagawa, *The Impact of Immigration on the Demography of Asian Pacific Americans*, Reframing the Immigration Debate, Tables 12-13, p. 97-8 (B. Hing & R. Lee ed. 1996).

<sup>17</sup> The New York City exit poll was conducted by the Asian American Legal Defense and Education Fund at polling sites in Manhattan, Brooklyn, and Queens. The San Francisco exit poll was conducted by the Asian Law Caucus at sites in Daly City, San Francisco, and Oakland. For more information, see the Consortium's 1995 publication, "Conducting Exit Polls, A Guide to Using Exit Polls to Promote and Safeguard Asian Pacific American Voter Participation." See L. Shinagawa, "Asian Pacific American Electoral Participation, Three Region Study, A Study of Exit Poll and Survey Results of the November 8, 1994 Elections for the San Francisco Bay Area, New York City and Los Angeles" (1995).

<sup>18</sup> This exit poll was organized by the Asian American Legal Defense and Education Fund at sites in Manhattan, Queens, and Brooklyn, with the assistance of the Chinatown Voter Education Alliance, and the Coalition of Korean American Voters.

<sup>19</sup> Phone conversation with Rosa Garcia-Viteri, Manager, Information Services Division, Department of Registrar-Recorder/County Clerk (April 10, 1996).

<sup>20</sup> General Accounting Office, *Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election* (1986).

<sup>21</sup> 28 C.F.R. 55.16, 58 Fed. Reg. 35373 (July 1, 1993).

<sup>22</sup> *Id.* at 55.17.

<sup>23</sup> *Id.*

<sup>24</sup> U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, 7 (1992).

<sup>25</sup> These laws include the Gentleman's Agreement with Japan limiting Japanese immigration; the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region; the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the U.S. as of 1910; the National Origins Act of 1924 which banned immigration of persons who were ineligible for citizenship; and, a decade later, the Tydings-McDuffie Act of 1934 which placed a quota of 50 Philippine immigrants per year.

<sup>26</sup> Ch. 344, 57 Stat. 600 (1943).

<sup>27</sup> P. Chew, William and Mary Law Review, *Asian Americans: The "Reluctant" Minority and Their Paradoxes*, 13 (1995).

<sup>28</sup> See *Ozawa v. U.S.*, 260 U.S. 178 (1922); *U.S. v. Bhagat Singh Thind*, 261 U.S. 197 (1923); and *In re Ah Yup*, 1 F. Cas. 223 (Cir. Ct. D. Cal. 1878).

<sup>29</sup> H. Kim, Ed., Dictionary of Asian American History, *Asian Americans and American Immigration Law* by T. Knoll, 52-3 (1986).

<sup>30</sup> U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, 9; See *Gong Lum v. Rice*, 275 U.S. 78 (1927).

<sup>31</sup> See L. Shinagawa, "Asian Pacific American Electoral Participation, Three Region Study, A Study of Exit Poll and Survey Results of the November 8, 1994 Elections for the San Francisco Bay Area, New York City and Los Angeles," (1995); Civil Rights Issues Facing Asian Americans in Metropolitan Chicago, Illinois Advisory Committee to the United States Commission on Civil Rights (May 1996).

<sup>32</sup> See P. Ong and D. Nakanishi, *Becoming Citizens, Becoming Voters*, Reframing the Immigration Debate, at 288 citing 1994 CPS census data (B. Hing & R. Lee ed. 1996).

<sup>33</sup> See *id.* at 285 citing a study conducted by the Field Institute.

Mr. GOODLATTE. Thank you, Ms. Narasaki.

Professor Rotunda, we are pleased to have you with us. We welcome your statement.

**STATEMENT OF RONALD D. ROTUNDA, ALBERT E. JENNER, JR., PROFESSOR OF LAW, UNIVERSITY OF ILLINOIS COLLEGE OF LAW**

Mr. ROTUNDA Thank you very much. I am pleased to be here. You know, it's a small world. Congressman Porter's grandfather who taught English to Italian immigrants may have taught my father. My father is 81 now, and he is doing volunteer work teaching English to Spanish and Italian immigrants. Representative Frank taught me. I was one of his students many years ago at Harvard. Congressman Lipinski's daughter was one of my law students some years ago.

Mr. FRANK. Excuse me. But if you had been my student at B.U., it would have been a more symmetrical thing. I'm sorry that it was at Harvard and not at B.U. when I taught there.

Mr. ROTUNDA That's life. We don't always get everything we want, I suppose.

I speak about this issue from both, I think, a personal and a professional perspective. First, personal. Both of my parents came to this country from Italy and did not speak any English. My father, I remember told me that the class he did best in in grade school and high school was mathematics, because he did know the Arabic numeral system. He did not allow me to speak Italian in my home. It was uncomfortable for him at first to speak English, but he and my mother spoke English at home. Most of the people I was with, including my grandparents who raised me, spoke English very poorly. It would have been much more comfortable for them to speak Italian. But my father said, "You need education and we live in a country of English. To succeed you must know English." He is absolutely right.

The only way you learn how to swim is to get in there and swim. There is the story of the Englishman on a stool moving his arms and legs. The butler comes in and says, "What are you doing?" He says, "I am learning to swim." "Shouldn't you be in the water?" "No. I am just interested in the theory of it." Well, if we want to learn English, we have to get in the water, and we have to start speaking English.

Now as an academic, as a professor of law, I also support the proposed amendments. Some minority political leaders oppose these. The people they purport to lead are really more likely to agree with me than with them. When California several years ago voted on English as the official language of government, the proposal passed in the Hispanic wards as well as in the English speaking wards. The people, including the Spanish minorities and others, they know that the only way to get out of the ghetto is to speak English. As long as only the Hispanic leaders know English, these people have less of a political voice because they only can speak through others.

When Hispanic parents have placed their children in English immersion training, the parents have strongly supported that. What's happened is their children learn English. All too often now with bilingualism, we make people illiterate in two languages rather than literate in one. We make them illiterate in two languages.

The Federal Government now has a lot of policies to discourage people from using English. This bill is a first step, a useful first



step in encouraging people to speak English, to help our recent immigrants. It's not a mean-spirited effort by xenophobes or nativists, though some opponents of this bill sometimes portray it that way. I don't oppose lawful immigration. I support it. If it wasn't for my father and mother coming here, I wouldn't be here.

No one is urging the Federal or State governments to stamp out diversity. The only question is whether the Federal Government should subsidize this diversity. It's important to understand what the Bilingual Voting Requirements Repeal Act would not do. It doesn't impose a literacy test. It doesn't preclude anyone from voting even if they do not know English. A voter may feel more comfortable with English or another language.

It is quite common, as Ms. Narasaki points out, for people to learn about the issues from their foreign language newspapers. We have plenty of them in this country. They are all protected by the first amendment. They publish sample ballots and people can bring those in. Indeed, you don't even have to know how to read any language in order to vote, because the typical ads and ballots say punch 14 or punch 23.

I frankly don't think people walk into the voting booth and look at a referendum that's two or three pages long in small print and then read it and decide for the first time what they are going to do. That has all been decided beforehand. They can get all of this information from the candidates. Indeed, I think this bill will encourage both major parties to compete for the votes of these recent immigrants. That is really much better and helps the immigrants better than, I think, having the parties ignoring their interests.

Some people argue that the Federal Government must subsidize what are called these language minorities because there is discrimination against them in voting. Evidence of the discrimination, we're told, is that the language minorities do not elect their candidates in proportion to their number of voters. This is illogical. We have a democracy. The fact that some people are not elected does not mean that there is voter discrimination. It means the voters rejected them. Communists and socialists run for office freely in this country. They are not elected. It doesn't mean that there's voter discrimination against Communists. Government should not be in the business of trying to make sure that elections come out a certain way. That is contrary to what democracy is all about.

My last point relates to basically unfunded mandates. In 1992, for example, Los Angeles was forced by these Federal requirements to spend \$125,000 to translate voting materials that affected 927 people. Now we're told that's only \$125,000. That's just one city. Look at it this way. Take the New York City cabdriver. In his whole life in Federal income taxes, his whole life he will pay less than a third of that. You are telling three New York City cabdrivers that their entire life of Federal income tax payments are to translate ballots for 927 people in Los Angeles for 1 year.

Now, if the people in Los Angeles still want to translate those ballots into Spanish, Chinese, or whatever, this Federal law doesn't prevent them from doing so. It only simply says that the people who pay the taxes, the local voter should decide what to do about translating.

I thank you very much. One last point: I have, over the last few years, traveled and advised several newly emerging democracies. I just came back from Muldova. Two years ago I was in Phnom Penn, Cambodia. Everybody wants to speak English. The prices are in dollars. In Vietnam, the prices are in dollars. When I got off the plane in Bucharest and I turned on the radio, the first thing I heard was an interview with Whitney Houston in English.

In the European Community, 83 percent of teenagers are learning English. The Danish Minister says English is no longer the second language in Denmark. It is the second mother tongue. At Sony Corp. in Japan, if you check off English as your foreign language, Sony tells you that English is not a foreign language to Sony Corp. Everybody wants to speak English. The cabdrivers in Europe all speak English. In Switzerland, the multilanguage country, one reason it works is everybody speaks English. We ought to encourage people to speak English in this country so they can leave minority ghettos and open up a world of opportunity, which I never would have had, had my father put me in a comfortable way of speaking Italian. Thank you very much.

[The prepared statement of Mr. Rotunda follows:]

PREPARED STATEMENT OF RONALD D. ROTUNDA, ALBERT E. JENNER, JR., PROFESSOR OF LAW, UNIVERSITY OF ILLINOIS COLLEGE OF LAW

#### INTRODUCTION

I approach the question regarding the proposed repeal of the Bilingual Voting requirements presently found in the Voting Rights Act of 1965, from two perspectives, one personal, and one academic. First, let us turn to the personal side.

A. When both of my parents came to this country from Italy, they could speak no English. I remember my father telling me that mathematics was his favorite subject in America, because he already knew the Arabic number system. He did not know English, but because he now lived in a sea of English, he soon learned the language. My parents usually spoke English at home although they were, initially, more comfortable speaking Italian. I was born in this country, and my parents required me to speak English, not Italian, even though many of the people I knew were also more comfortable speaking Italian.

My father told me that we lived in America and we must learn to speak English. And the best way to do that is to start speaking English. Learning a language is like learning how to swim. You can only learn it by doing it.

My parents did not have much education. It was the Great Depression: my father was not able to go to college, and my mother stopped school after the eighth grade. But my parents taught me that education is important, and, to succeed in this country you need to know English, and the best way to learn it is to speak it.

A lot of recent immigrants feel the same way that I do. I have a lot of Italian relatives that have migrated to Quebec. They want to learn to speak English, the language of commerce throughout the world. Unfortunately, under the laws of Quebec, they must speak French, and their children cannot be taught in English in the school system. That means that they will be deprived of important economic opportunities and forced to live in a French island surrounded by a sea of English. We should not emulate the Canadian example.

B. As a Professor of Law as well as on the personal level, I support the proposed amendments. Some minority political leaders will, no doubt, oppose these amendments. However, the people whom they purport to lead are more likely to agree with me than with them. When California several years ago voted on English as an official language of government, the proposal passed in the Hispanic wards, even though many Hispanic political leaders opposed it. The people knew that the only way for them to get out of the ghetto is to speak English. And as long as only the Hispanic leaders knew English, the people have less of a political voice, because they could only speak through others.<sup>1</sup> When Hispanic parents have placed their

<sup>1</sup>E.g., *Ingles, Por Favor*, Wall Street Journal, Feb. 23, 1996, at A10, col. 1-2: Spanish-speaking families (those who speak primarily Spanish at home) want their children to speak English

children in English immersion training, after the parents experienced what it did to help their children, they ended up supported it by very large margins.<sup>2</sup>

*The Federal Government's Present English Policy Is Misguided.* The Federal Government should act to encourage people to learn English. Unfortunately, the Government sometimes discourages people from learning English. That policy puts our recent immigrants at a disadvantage. Not too long ago the Department of Housing and Urban Development investigated Allentown, Pennsylvania, after the city council enacted a voluntary official English law. The ordinance was hardly earth-shaking: it merely urged the mayor to issue all documents exclusively in English (unless public health and safety were involved, or federal or state law mandated otherwise). The HUD bureaucracy was anti-English, and threatened to cut-off Allentown's federal housing money.<sup>3</sup> HUD claimed that Congress had made it a civil right to require the Government or Government officials to speak in a language other than English. I know of no such law, and HUD never cited any code sections. Eventually, because of Congressional pressure, HUD backed down.<sup>4</sup>

Our Government should encourage, *not discourage*, the use of English. HUD should remember the first rule of medical ethics and apply it to our Government: first, do no harm. When our Government discourages the use of English, it does substantial harm.

The effort to encourage people to use English is not a mean-spirited effort by xenophobes, although some opponents of this bill try to portray it that way. I do not oppose lawful immigration; indeed, I support it. If my parents did not immigrate here, I never would have had the good fortune to have been born here. I want new immigrants to have the same opportunities that I had. And that means that the Government, both state and federal, should encourage and aid people in learning and using English. I am proud of my Italian heritage, but I even more proud of being an American.

Support for the proposed law has nothing to do with nativist sentiment, as opponents contend.<sup>5</sup> No one is urging the Federal or State Governments to stamp out diversity or culture. The only question is whether the Government should subsidize it. People create their own culture, and the Government should not interfere by trying to stamp it out or prop it up. Instead the Government should encourage people to use English, so that they can share in a world of opportunity.

Therefore I support the Bilingual Voting Requirements Repeal Act of 1995. It is a modest and useful effort to encourage people to learn and use English. It tells the American voter that the Government supports the use of a common language, and English is the glue that binds us all. The proposal does not divide society. On the contrary, it helps pull us all together, by encouraging the use of one common language.

*The Proposed Amendments.* It is important to understand what the Bilingual Voting Requirements Repeal Act of 1995 does not do. It does not impose a literacy test. While the Supreme Court has upheld the constitutionality of literacy tests, it has also recognized Congressional power to ban them.<sup>6</sup> This bill will impose no literacy test. It will not preclude anyone from voting, even if they do not know English.

in school. These people often feel intimidated by bureaucrats who discourage them from dropping their children from classes taught in Spanish. The parents want the children to learn English before they reach puberty, the age when most humans cease to be able to acquire the ability to speak a new language without an accent. The bilingual teachers, who teach these children, are opposed to English-only movements and appear to be in a conflict of interests, because present Federal law mandates their services, and they earn a lot more per year because of these federal requirements.

<sup>2</sup> John J. Miller, *Bilingual Ed's Abolitionists*, Wall Street Journal, April 10, 1996, at A16, col. 6.

<sup>3</sup> The Allentown example, by the way, also illustrates that the question of English need not be caught up in partisan politics; the city council that engaged the voluntary official English law was dominated by Democrats. The ordinance was passed by a vote of 6 to 1.

<sup>4</sup> HUD backed down in April, 1995. See, Champaign-Urbana News-Gazette, June 11, 1995, at B-3, col. 6; Jorge Amells, *HUD's Battle Against English Only*, Wall Street Journal, Aug. 21, 1996, at A8, col. 3-5.

<sup>5</sup> E.g., Kevin J. Lanigan, Attorney for the Mexican-American Legal Defense & Educational Fund, Inc., testimony of April 1, 1992 before the House Subcommittee on Civil and Constitutional Rights, Regarding the Voting Rights Act Language Assistance Amendments of 1992. He refers, at p. 6, to "recent blossoming of nativist sentiment."

<sup>6</sup> *Lassiter v. Northampton County Board of Election*, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072 (1959). The Supreme Court reaffirmed *Lassiter* in *Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966). The Court ruled that a nondiscriminatory literacy requirement (i.e., a literacy requirement that is not used for racist reasons) is Constitutional under the Fourteenth Amendment, but Congress, using its powers under section 5 of the Fourteenth

A voter who does not know English or feel comfortable with English may still vote, and this bill will in no way limit the franchise. There may be voters who do not feel comfortable enough with the English language to cast a ballot without some type of foreign language assistance, and this proposed law would not in any way ban such assistance. For example, foreign language newspapers will continue to have the free speech right to publish sample ballots translated from English, and voters can take these sample ballots into the voting booth. It is quite common for candidates to distribute sample ballots urging supporters to, e.g., "punch box 14." The point is that the Bilingual Voting Requirements Repeal Act of 1995 does not disenfranchise anyone. Instead it is a useful step—I would hope a first step—in encouraging people to use the English language.

Only by using English will people learn to use it. And the ability to use English will empower our recent immigrants and others; it will open up a world of opportunities that do not now exist for them.

Sometimes people argue that the Federal Government must subsidize what are called "language minorities" because there is discrimination against them in voting. Evidence of such discrimination, we are told, is that language minorities do not elect "their candidates" in proportion to their number of voters.<sup>7</sup> This is illogical. We have a democracy. The fact that some people are not elected does not mean that there is voting discrimination. It means that the voters rejected them. Communists vote freely and run for office freely in this country. They are seldom, if ever, elected, because the voters do not choose them, not because there is voter discrimination.

Congress should not be in the business of making sure that elections come out a certain way. That is contrary to what democracy is all about. The fact that people who speak a minority language vote against people who speak that language means that these candidates—the people who purport to speak for these voters—do not really represent them. When voters have a choice, they choose other people. African-Americans are not required to vote for African-American candidates any more than Mexican-Americans are required to vote for Mexican-American candidates.

*Unfunded Mandates.* In addition, enactment of this legislation will remove a burdensome requirement that Congress now imposes on many states and localities. In 1992, for example, Los Angeles was forced by federal requirements to spend \$125,250 to translate voting materials that affected only 927 people.<sup>8</sup> The Federal Government is imposing substantial unfunded mandates on Los Angeles and other cities and states. The 1990 census lists 327 different languages now spoken in the United States.<sup>9</sup> What would be the cost of translating all of them? If we do not translate all of them, on what principled basis will we pick and choose among them? Canada now spends about \$6.7 billion dollars (American) every year on its language program. Canada's extensive bilingual program has divided that nation, not brought it together. We should learn from Canada's mistakes, rather than repeat them.

The City of Los Angeles could have used the money spent for ballot-translating for other purposes that it might find more pressing. Think of how many disease bearing rats the City of Los Angeles could have destroyed in an extermination program funded by that \$125,000. Think of how much education that money could have purchased for ghetto inhabitants. And, of course, Los Angeles is only one city. Multiply the money spent by Los Angeles by the number of other cities on which this federal law (this unfunded mandate) imposes similar financial burdens.

If Congress repeals this legislation, the people of Los Angeles would not be precluded from imposing this financial burden of translation on the city. On the other hand, the people who live there might decide that the money should be used for other purposes that the people regard as more pressing. Let the people who live in Los Angeles (the ones who pay the taxes), not the Federal Government, make this decision.

*The Government Should Encourage the Use of English.* Supporters of bilingual education in the United States, as well as opponents of the Bilingual Voting Re-

Amendment, can constitutionally prohibit states from using a literacy test. Congress in fact did so, in certain circumstances: if the voter successfully completed the sixth grade in a public or private school accredited by the Commonwealth of Puerto Rico. 42 U.S.C.A. 1973b(e) ("Completion of requisite grade level of education in American-flag schools in which the predominate classroom language was other than English.")

<sup>7</sup>E.g., Margaret Fund, Executive Director of the Asian American Legal Defense and Education Fund, testifying before the House Subcommittee on Civil and Constitutional Rights, on the Language Assistance Provisions of the Voting Rights Act (April 1, 1992); Kevin J. Lanigan, Attorney for Mexican-American Legal Defense & Educational Fund, Inc., before the House Subcommittee on Civil and Constitutional Rights, regarding the Voting Rights Act Language Assistance Amendments of 1992, (April 1, 1992), at, e.g. note 19.

<sup>8</sup>Champaign Urbana News-Gazette, Sept. 24, 1995, at B-3, col. 6.

<sup>9</sup>Joan Beck, *Soothing Words*, Chicago Tribune, Sept. 10, 1995, §1, at 19, col.3.

quirements Repeal Act of 1995, are no doubt well-intentioned. But they have not yet recognized that bilingualism has not worked. Instead of educating people in English, we make people illiterate in two languages. Between 1980 and 1990, the U.S. Census Bureau reports the percentage of people who say that they speak English "not well" has increased 36.7%.<sup>10</sup> The present system has not worked. It is time to try something else.

Instead, let us encourage people to use English. Nothing in this law prevents people from learning a second language. But the Federal Government should facilitate and encourage (not discourage) the use of English. English has now become the international language.

Over the last several years, I have traveled throughout Europe and Asia advising various newly-emerging democracies. Abroad, everyone wants to learn and speak English. The hotel in Kishinev, Moldova, like the hotel in Phnom Penh, Cambodia, posts prices in American dollars. In Vietnam, prices are posted in dollars, and English language schools are the most popular. When I turned on the radio in Bucharest, I heard an interview with Whitney Houston in English. In the European Union 83% of teenagers are now studying English. The Danish Minister recently announced that English used to be everyone's second language; now, he says, "it's the second mother tongue."<sup>11</sup> At Sony Corporation, in Japan, if a job applicant lists English as his foreign language, the applicant is told: "at Sony, English is not a foreign language."<sup>12</sup> Franciszek Grucza, at the Warsaw, Poland, Institute of Linguistics, says: "English is not the language of American or British natives only. This is our language too."<sup>13</sup> If English is the language of Poland, it should be the language of America too. America should also turn to English, and help our recent immigrants by encouraging the use of English.

The United States Constitution does not mandate English as the official language, though some state constitutions—e.g., Illinois—do. During the eighteenth century, Benjamin Franklin expressed concern at the large number of German speaking settlers in Pennsylvania, and Noah Webster urged that "American" and not "English" be the official language. In some instances—Michigan, originally settled by the French; New Mexico, originally settled by the Mexicans; Hawaii, originally settled by Hawaiians—Congress has delayed statehood until the territory was settled by English-speaking majorities.

Because of war fever during World War I, some states tried to ban private schools from teaching foreign languages, especially German. In 1919, Nebraska enacted a statute prohibiting the teaching of any subject in any language other than the English language in any school, public or private; it also forbade the teaching of languages other than the English language below the eighth grade. The state supreme court interpreted the statute not to apply to "ancient or dead languages." In *Meyer v. Nebraska*<sup>14</sup> the Supreme Court, speaking through Justice McReynolds, invalidated the statute as interfering with an aspect of liberty guaranteed by the due process clause of the fourteenth amendment. The Court did not rely on the first amendment (which had not yet been incorporated to apply to the states<sup>15</sup> through the due process clause of the fourteenth amendment); rather, it relied on substantive due process:

The desire of the Legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civil matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every character of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefore in time of peace and domestic tranquility has been shown.

The power of the state . . . to make reasonable regulations for all schools, including a requirement that they shall give instruction in English, is not questioned. . . .<sup>15</sup>

*Meyer* was written during the heyday of substantive due process, but the modern Court has not suggested that it is no longer good law. However, this decision only

<sup>10</sup> Reported in, Bob Greene, *In Plain English: Not a Bar Idea*, Chicago Tribune, Sept. 3, 1995, 5, at 1, col. 1.

<sup>11</sup> Barry Newman, *World Speaks English*, Wall Street Journal, March 22, 1995, at A1, col. 1, & A15, col. 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at A15, col. 3.

<sup>14</sup> 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

<sup>15</sup> See, *Gillow v. New York*, 268 U.S. 652, 666, 45 S. Ct. 625, 630, 69 L.ED. 1138.

<sup>16</sup> 262 U.S. at 402–03, 43 S.Ct. at 628. Holmes and Sutherland, JJ., dissented without opinion.



forbids a state from prohibiting a private school from teaching a subject (such as history) in a foreign language or teaching a foreign language. It does not prevent a state or the federal government from encouraging the use of English, or publishing its messages and signs (such as road signs, voting instructions, and so forth) in English. Indeed, the Court had no problem with "a requirement that they shall give instruction in English."

*Meyer* does not prevent the state from prohibiting the teaching of foreign language in a public as opposed to a private school. The defendant in that case was a teacher who taught the subject of reading in the German language in Zion Parochial School. The Court made clear that no "challenge has been made of the state's power to prescribe a curriculum for institutions which it supports."<sup>17</sup> Nor does *Meyer* prevent the state from requiring that English be taught in all schools, public or private. The power of the state to "make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned."<sup>18</sup>

The same year that the Court decided *Meyer*, a Congressman introduced a bill to make "American" the official language, but that bill failed. Since then, some states have made "English" or "American" the official language. During the 1980's there was a renewed effort to make "English" the official language in this country. In 1981, for example, then Senator S.I. Hayakawa, representing California, proposed a federal constitutional amendment making English the official language. Congress did not support that amendment.<sup>19</sup>

The Bilingual Voting Requirements Repeal Act of 1995 is much more modest in its intent and effect. It simply repeals a requirement that certain states or political subdivisions must supply voting materials in various foreign languages. The repeal simply reduces the extent to which the Federal Government imposes unfunded mandates on the states. States, for example, would still be free to supply ballots in foreign languages, if the voters in those states choose to do so.

*Conclusion.* There can be no constitutional problem with the Bilingual Voting Requirements Repeal Act of 1995. Repealing it now is good policy because it will encourage our immigrants to learn English. Congress made certain findings when it enacted the Voting Rights Act.<sup>20</sup> The world of 30 years ago is not the world of today. Congress and the entire country has had more experience in the bilingual movement, and the results have served to validate the belief of my father many years ago, when he told me that the best way to learn English is to use it, even if it is more comfortable to use another language. He was right, and if I had not followed his advice, I would have found that opportunities would have been foreclosed to me.

This Congress should do what it can to open opportunities to Americans, especially those who are having difficulties with the language. That is why Congress should enact the Bilingual Voting Requirements Repeal Act of 1995.

Let us help our recent immigrants. Let us do for them what my father did for me. Let us encourage the use of English. In particular, let us help our children, because children who are not taught English when they are young are at a special disadvantage throughout life. The proposed law is a useful first step.

Mr. GOODLATTE. Thank you, Professor.

Dr. Silber, your comments about your father are similar to what I understand about my grandfather, who came to the United States from Germany not long after your father did. Shortly afterwards, he came home one day to my grandmother with something that he called an en-cy-clop-ed-ia, which of course turned out to be an ency-

<sup>17</sup> 262 U.S. at 402, 43 S.Ct. at 628.

<sup>18</sup> 262 U.S. at 402, 43 S.Ct. at 628.

<sup>19</sup> See generally, Dennis Baron, *The English Only Question: An Official Language for Americans?* (Yale U. Press, 1990); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. Davis L.Rev. 555, 574-611 (1994) (discussing cases on bilingual education).

*Comparison to France.* France traditionally has asserted state power to protect the French language and keep it pure. In 1994 the French Parliament, for example, banned 3,500 "foreign" words, such as "cheeseburger," "chewing gum," and "bulldozer." The law prevents not only schools and government agencies and officials but also advertisers and corporations from using these foreign words instead of a corresponding word from French. Thus, one should say "logiciel" instead of "software." The new French law is accompanied by various penalties, such as fines. AP Wire Service, *New French Law Guillotines English, Other Foreign Words*, reprinted in, *Champaign-Urbana News Gazette*, July 2, 1994, at B6, col. 1-2. This issue is a straw man here; no one argues that there should be any government agency to guard the "purity" of the English language.

<sup>20</sup> See, 42 U.S.C.A. §§ 1973b(f) ["Congressional findings"], 1973aa-1a(a) ["Congressional findings"].

clopedia, and which he used to great effect to substantially improve his ability in the English language.

I'd like to ask you, I understand that as the 1990 Massachusetts Democratic gubernatorial nominee, your public position in your book "Straight Shooting" was that bilingual ballots are a pernicious practice. Am I correctly stating your position? If so, in your estimation, did that position have significant public support in Massachusetts?

Mr. SILBER. Yes. I think that Barney Frank is in a very good position to judge that. I didn't lose that election because of any position I took with regard to bilingual education. I think that Ernesto Ortiz, whom I quoted in that book, put it right. He said, "I send my children to school to learn Spanish so they can grow up to be busboys and waiters. I have to teach them English at home so they can grow up to be doctors and lawyers." The opportunity to join the mainstream in the United States depends on it.

I find it very surprising to hear condescension bordering on racism, concerning Asians, Hispanics, and Native Americans, as if somehow they have to be given something special that no other minorities had because otherwise they couldn't learn the English language. When, as a matter of fact, anyone in the university community knows that the Asian students are coming out at the top of the charts. The problem in California is not that the Asians can't do well in English. It's that they do too well in English; so much so that if they just followed talent in the admission at the University of California, it would be about 50 percent Asian.

When the Hispanics know English, they do exceedingly well. When they go through those bilingual programs and don't learn English until they are in the third or fourth grade, the transitional bilingual law becomes a transitional dropout law, because when they get beyond the limits guaranteed by bilingual education and are deficient in the English language, they find school horribly boring. They can't do well in it, and the failure rate is exacerbated just by the bill that was designed to help them.

Mr. GOODLATTE. Thank you. Ms. Narasaki, in your testimony you state that Asian Pacific Americans are 10 percent of the overall population of California, but only 2 of the 52-member congressional delegation are Asian Pacific American, and only 1 of the 80-member State assembly is Asian Pacific American.

Do you believe evidence of voting discrimination is that language minorities do not elect their candidates in proportion to their number of voters?

Ms. NARASAKI. No. That's a misstatement. Basically what I am saying is that is an example of how Asian Americans are not fully participating in our democracy. Not that it is evidence per se that we're being discriminated against in elections. I do think it tells you, that together with the low rate of voter registration, why additional assistance is useful and needed.

Mr. GOODLATTE. Professor Rotunda, do you believe that the Constitution commands that elections be conducted in languages other than English anywhere in the United States?

Mr. ROTUNDA. No. Absolutely not.

Mr. GOODLATTE. You state in your written testimony that this bill will impose no literacy test. Do you think then that the current

state of the law, where elections conducted only in the English language are equivalent to a test or device is fundamentally flawed?

Mr. ROTUNDA I'm sorry. Can you repeat that?

Mr. GOODLATTE. Yes. Do you believe that the current state of the law, where elections conducted only in English language are the equivalent to a test or device is fundamentally flawed? In other words, the current law views in certain parts of this country if certain percentage of nonspeaking English population is in that area, if you do not provide ballots in language other than English, that's considered to be a test or device.

Mr. ROTUNDA Right. I think that's absolutely incorrect. That is, literacy tests have been used in the past. The Supreme Court has said literacy tests are not per se unconstitutional. They are constitutional. But they have often been used for racist reasons. That is, they ask blacks to interpret Einstein, and they ask whites to interpret Doonesbury. In those cases, the courts have invalidated them.

Congress, some years ago, invalidated—prohibited all literacy tests. I have no problem with that. The next question then becomes, do you have to speak any language to vote. The answer is you don't, but even a ballot that is all in English doesn't preclude a non-English speaking person from voting. They can bring in sample ballots printed in the newspapers and in other places. It's not a device to preclude people from voting at all. It is simply a step, one step, an important and modest first step for the Federal Government to not discourage the use of English, to facilitate this common glue that binds us all together.

Mr. GOODLATTE. Thank you. Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman. If I, I must say, Mr. Rotunda, interpret John Silber's body language correctly, he and I both think that Doonesbury may sometimes be more abstruse than Einstein. We'd probably pick a different simple one.

Mr. ROTUNDA Bad example.

Mr. FRANK. That was not a question. I was not here for the opening statement because of another meeting. I just would like to repeat I guess we're one hearing further on, my lament of Tuesday, which is that this subcommittee, which is charged with jurisdiction over discrimination, violation of people's constitutional rights, continues the pattern with this hearing of having hearings to critique proposed solutions to discrimination, but has no hearings whatsoever and no other action about discrimination itself.

Now sometimes the hearings are perfectly plausible. I collaborated with the chairman of this subcommittee in legislation that corrected a flaw in the antidiscrimination law dealing with housing, so that we made it easier for people who live in manufactured housing and are predominantly elderly to maintain an elderly-only situation. I think there was a glitch in the law. We cleared it up.

Obviously it's part of our job to examine proposed remedies for discrimination. The Voting Rights Act was one. Affirmative action was another. School integration measures are others. But this subcommittee has done only that. If you were to take the world view of this subcommittee, it would be that there is apparently no real discrimination in the world. Nobody is mistreated based on their race or on their sex or on their ethnic origin, because we have done

zero to look into whether or not there's an underlying problem of discrimination. We have had many many hearings about the problems with the remedies. I think that shows a serious imbalance. I regret that we continue that pattern. Several of us have asked for some hearings on other issues that would deal with underlying discrimination, but instead we get this continued pattern, literally of just critiquing the solutions.

Now as to this particular solution, let me say first to John Silber, as I heard your answer to the previous question, it had to deal mostly with the bilingual education provisions, of course which we don't have jurisdiction of. My sense on the voting issue is that, and this the sense I get from the bilingual population I have representing, which is largely in my bilingual situation people whose native language is Portuguese. It is that the younger people learn English very rapidly. The people who are slower are the older people. To the extent that there is a request for bilingualism in the population I represent, it's for older people.

Is there any evidence, I would ask all three, any evidence—I'm not talking now about bilingual education, because that's not part of our charge here today, is there any evidence that having bilingual ballots, which are obviously relevant particularly for referenda, that that's in any way a retardant in getting people to learn English? Because I am skeptical that having bilingual ballots is a retardant, given the overwhelming incentives people would have to learn English.

John, could I ask you?

Mr. SILBER. I think that people take great pride in the right to vote. They don't earn that right to vote until they are naturalized as citizens. The Naturalization Act requires competency in English language.

Now, if they want to be citizens, the way to earn that privilege, which is not a right, is to learn English. If we want to change the Naturalization Act and say English is not required, that's one thing.

Mr. FRANK. That's not my question. My question is, does the existence of the bilingual ballot requirement in any way—is there any evidence or any logic that says this retards the incentive that would otherwise exist?

Mr. SILBER. Certainly I think that.

Mr. FRANK. In fact, I would take your answer, John, to be the opposite. That is, you don't get to that question until you have demonstrated competence in English. So the fact that you could have a bilingual ballot couldn't then be a retardant, given what you say. If you have to first demonstrate a competence in English.

Mr. SILBER. Because this Voting Amendment Act that put in the bilingual ballots really was a way of washing out the significance of the Naturalization Act. It's highly discriminatory.

Mr. FRANK. John, that's not what I have asked. Please. You'll have plenty of time to respond to other people. The question is, we have a thing, some people are comforted by it, I think particularly older people. I'm trying to find out if this does any harm. It is highly unlikely to me that this is in any way retarding the incentive that ought to exist and I think does exist to learn English.

Mr. SILBER. When the person reaches 55 years of age, if he has been here 15 years, you waive the requirement of this English language for the citizenship. They are allowed to become citizens without understanding English.

Mr. FRANK. And you would change that?

Mr. SILBER. No. I wouldn't change that. I think that when they have been here 15 years and they are 55, they have—

Mr. FRANK. They should be able to be citizens. Well, if we are going to let people, we then allow them to be citizens, wouldn't it be logical then that we would also, because we would want informed voters, to have the option of a bilingual ballot for some of those people, particularly on complicated issue questions. Our names they could recognize.

Mr. SILBER. I think that there is a good example of where ethnicity ought to be a voluntary thing. There's no reason why the Portuguese community or the Chinese community or the Italian community shouldn't provide all the trots that they want for the English ballot to show them how to do it. But I don't think it's the job of the Federal Government, because it's discriminatory. What it discriminates against—

Mr. FRANK. John, you are not answering my question. I understand you can make your statement, but frankly I take the lack of an answer—although I will have to—I assume you didn't mean—

Mr. GOODLATTE. Let me intercede for just a second.

Mr. FRANK. Can I have 30 more seconds?

Mr. GOODLATTE. Without objection.

Mr. FRANK. If I can have 30 more seconds, let me just say I assume we can agree that you didn't quite mean literally that ethnicity is voluntary. One gets one's ethnicity with birth. I mean ethnic activity is—

Mr. SILBER. No. You get your ethnicity as an American by becoming a citizen, because we don't base it on what—

Mr. FRANK. Right. I will take it, then—I guess my time is expired. The question to me is—and I would just to finish up, Mr. Chairman, say my question is, I don't really see what all the fuss is about. I don't understand why people are so resentful of this.

The notion that this is in any way a retardant to people becoming Americanized seems to me a very unsubstantiated one. I think it just bespeaks a kind of resentment of our trying to accommodate people that I don't understand.

Ms. NARASAKI. Mr. Frank, I would like to add to that. It's very clear from the huge waiting lists in New York, in Virginia, and L.A., of people wanting to learn English, that this does not have anything to do—I mean none of this has anything to do with retarding people's interest in learning English. That's very economically based. You only vote once or twice a year.

As you know, it's particularly hard on the elderly who have the hardest time learning another language.

Mr. FRANK. Mr. Rotunda.

Mr. ROTUNDA. Just two brief comments. This is a small piece of a larger mosaic.

Mr. FRANK. But that's all I'm talking about. Please don't. My jurisdiction is only on this piece, this Voting Rights Act. If you are talking about bilingual education, you've got to go elsewhere.



Mr. ROTUNDA. If I may continue briefly, I think a problem with this act is that it pretends to people that we're solving a problem.

Mr. FRANK. Are you going to answer my question, Mr. Rotunda?

Mr. ROTUNDA. Yes.

Mr. FRANK. Does this retard people's incentive to speak English?

Mr. ROTUNDA. Yes. If you give me just a little time to say one paragraph, and I'll try to explain this. In California, Los Angeles alone, \$125,000—

Mr. GOODLATTE. The gentleman's time has expired.

Mr. ROTUNDA. That money—

Mr. CANADY. I'll be—

Mr. GOODLATTE. Perhaps you'll have an opportunity with the next.

Mr. FRANK. He may give you the question.

Mr. CANADY. Mr. Rotunda, if you'll proceed.

Mr. ROTUNDA. The \$125,000 that one city paid for 924 people could be used to cut down these waiting lines for the people that want to learn English. This is a small piece of a large mosaic. Whenever we require the State to spend money that the people of the State don't want to spend it on, we are taking it from some place else. We're not paying for it, we're shoving the burden on California. So in California when people have the long line to get into English as a second language classes, they are told: "we don't have the money," says Los Angeles. "We just spent it on translating these ballots for 924 people."

There's a cause and effect problem. That is, a lot of the speakers in the first panel, and Ms. Narasaki and Representative Velázquez, for example, said Puerto Rican participation is low in the United States, and therefore we should extend the correct the law. Puerto Rican voting participation can't be low in the United States because we don't have bilingual ballots. We do have bilingual ballots. What is wrong, I think, is for politicians to tell the people back home we have solved this voting participation problem with something that has nothing to do with it.

Mr. FRANK. Do you know anyone who has said that? I don't think any politician has said we have solved the problem with this bill.

Mr. GOODLATTE. I think Mr. Canady has the time.

Mr. ROTUNDA. We're trying to solve discrimination. We're doing something. But you're not doing something with this forced translation of ballots.

Ms. NARASAKI. I really feel I have to correct a misstatement.

Mr. CANADY. Excuse me. I'm sorry. I'm sorry, I have questions I'd like to ask.

Mr. FRANK. I was trying to save your voice, Charles.

Mr. CANADY. I appreciate your solicitude. My voice will come back.

Do any of you know how many people utilized bilingual ballots in the last election?

Ms. NARASAKI. Well, I think that the statistics that I quote, if you see in New York, for example, that 30 percent of the people that we polled in the boroughs in New York, 30 percent of the Chinese voters used it, that you could get some estimation.

Mr. CANADY. You don't know what it is?

Ms. NARASAKI. It's in the thousands.

Mr. CANADY. OK.

Ms. NARASAKI. That's one of the things I wanted—

Mr. CANADY. Would it be in the tens of thousands or just the thousands?

Ms. NARASAKI. It would be much more than tens of thousands. I'm just talking about the Asian-American vote. You also have Native American and Hispanic voters.

That is what I want to correct about what Mr. Rotunda keeps saying about L.A., that there's only 900—

Mr. CANADY. I'm sorry. I have questions I want to ask. You will get another opportunity perhaps.

Are most of the people who utilize bilingual ballots naturalized citizens? Ms. Narasaki, do you know?

Ms. NARASAKI. For Asian-American citizens, yes. That's true. I don't know what that would be for Latinos. For Native Americans, clearly not, because they are Native Americans.

Mr. CANADY. But for Asians, most of them would be naturalized citizens?

Ms. NARASAKI. Right.

Mr. CANADY. Are they people who were naturalized because they are over 55 and have been here for 15 years and didn't have to demonstrate English proficiency to become citizens?

Ms. NARASAKI. No. It is a mix, because the naturalization laws require you to have a fluency with words in common usage. As was pointed out by many speakers, most of the stuff that is on our ballots are not words in common usage.

Mr. CANADY. OK. So at least in the Asian community, most of the folks who use the bilingual ballots would be naturalized citizens who demonstrated English proficiency, but it's not at the level that you feel they need to utilize an English ballot?

Ms. NARASAKI. Right. I think one of the issues is Professor Rotunda keeps saying well, people could just bring in information from ethnic newspapers. But if you are concerned about voter fraud, actually you would want to make sure that the Government is putting together that translated ballot and not individuals.

Mr. CANADY. But of course we can't do anything about people putting together ballots. They do that all the time. That is going to happen. I mean that happens in those communities I would assume. It's happened in every community I have ever witnessed.

Ms. NARASAKI. Right. But my point is, it's not the bilingual ballots that generate fraud, which was hinted at earlier in earlier testimony.

Mr. CANADY. I think the concern was not that the—at least a concern that was expressed is not that the ballots generate fraud, it's that there may be some people who are claiming to be citizens who are in fact not citizens, and that that could be a problem.

Did you have something else you wanted to—do any of the members of the panel have anything else you want to say? Dr. Silber.

Mr. SILBER. I want to say that when Ms. Narasaki spoke about that this voting rights exception that gives the right to the bilingual ballot applies only to significant minorities, there I think she gave away the game, because if you believe that it's a right, it's a right of every single citizen. Consequently, any single citizen is a significant minority. As a matter of fact, Hungarians don't get the

ballot in Barney Frank's district or in Boston. You have to have a certain number. There's no Algonquin that gets the ballot in Algonquin or in Delaware or in Iroquois. The Sioux don't have ballots in Sioux.

This is not a right, because if it were a right, it would be something that anybody could claim. A single individual, no matter what language he spoke, could claim a right to that ballot. At that point, when you treat it as a right and you don't try to wink at the Naturalization Act, it would become a vastly expensive and chaotic enterprise.

Mr. GOODLATTE. Let me interject here. Without objection, the gentleman from Florida will have 2 additional minutes.

Mr. CANADY. Please proceed.

Mr. SILBER. I think I finished what I had to say. I just think that it's clear that it's not a right, and the way it's practiced is highly discriminatory. To the extent that Congressman Frank wants a suggestion of how this committee can end discrimination, repeal this act. Pass the bill that we are discussing today and you'll end at least that form of discrimination, which says that if you are a Chinese or if you are a Hispanic but you don't live in a community that reaches that numerical threshold, you don't have any right to the bilingual ballot, which clearly indicates that they discriminate on the basis of numbers.

Mr. FRANK. Mr. Chairman, will you yield me 10 seconds?

Mr. GOODLATTE. Yes.

Mr. FRANK. John, I have to say in that sense, none of the victims of that discrimination have ever complained to me of it. I have never had someone who was Chinese or Spanish speaking saying because I don't get the right, I don't want it to exist for other people. That is not a form of discrimination against which anybody has ever complained to me.

Mr. SILBER. Well, maybe there can be a first one.

Mr. CANADY. Thank you.

Mr. GOODLATTE. Thank you, Mr. Canady.

Mr. FRANK. Let me just ask unanimous consent to put that in the record.

Mr. GOODLATTE. Without objection—

Mr. FRANK. The statement from the Chinese for Affirmative Action to be put into the record.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

[The prepared statement follows:]

#### PREPARED STATEMENT OF CHINESE FOR AFFIRMATIVE ACTION

The right to cast an informed vote is fundamental to the operation of a democratic society. Any law that impedes the right of a U.S. citizen to vote is unconstitutional and undemocratic. H.R. 351 is just that kind of law. If it were to pass, it would violate the voting rights of limited English proficient (LEP) citizens and approximately 230,000 LEP Asian American citizens in California alone.<sup>1</sup>

Asian Americans have lived in the United States for nearly 150 years, but only until recently have they been allowed to participate fully in the democratic process. The passage of Section 203 of the Voting Rights Act of 1965 (and related amendments) mandated certain states and counties to conduct bilingual elections for the benefit of language minority citizens.

But the passage of Section 203 is not the end of the story. The road to political participation by LEP citizens was fraught with hostility and intimidation. In 1978, the U.S. Department of Justice had to litigate and secure a court-ordered Consent

Decree to compel San Francisco election officials to fulfill their obligations under Section 203.<sup>2</sup> Later, in 1983 and 1984, the conduct of bilingual elections in San Francisco and other counties set off a number of voter initiatives calling for the repeal of Section 203.<sup>3</sup> Most appallingly, in 1982, U.S. Attorney Joseph Russoniello of the Northern California District initiated a highly divisive, unjustified Bay Area probe of bilingual voters who allegedly were not American citizens. The probe failed to reveal any instances of a non-citizen casting a bilingual ballot, but as a result of the probe LEP citizens reported that they were intimidated from registering to vote.<sup>4</sup>

Due in part to the intimidation by these ballot measures and the unjustified bilingual voter, LEP Chinese American citizens who are qualified to vote do not enjoy full voter participation. Based on the results of the 1990 Census, the Census Bureau identified 31,056 qualified LEP Chinese American voters in San Francisco.<sup>5</sup> Of that number, nearly one-third, or 9,000 LEP Chinese American citizens in San Francisco have registered to vote.<sup>6</sup>

Although it was hoped that more LEP citizens would register to vote, particularly after the 1992 amendments, Section 203 has still been effective in assisting LEP voters to cast an informed ballot. In a 1992 study of LEP Chinese Americans who were registered to vote in San Francisco, it was found that 90% of the participants felt that the availability of bilingual election materials was important in encouraging them to vote in the most recent mayoral elections.<sup>7</sup> Furthermore, an overwhelming majority believed that the Chinese version of the bilingual ballot was very important and was not difficult to fill out.<sup>8</sup> These findings were similar to findings in Los Angeles and New York surveys of Asian Americans about the need for bilingual elections.<sup>9</sup>

In response to the opponents of bilingualism who believe that bilingual elections impede the integration of immigrants into American society, the findings of the 1992 study showed just the opposite. LEP Chinese American voters kept themselves informed about the 1991 mayoral election issues through Chinese language television news programs and newspapers.<sup>10</sup> Furthermore, the study showed that LEP Chinese American voters shared the same concerns about the economy, law and order, and adequate health care as expressed by California in other polls.<sup>11</sup>

Concerns about adult English literacy cannot be addressed by withdrawing bilingual elections and violating the voting rights of U.S. citizens. When the constitutionally mandated right to vote is weighed against the concern for adult English literacy (which when we last checked was not constitutionally mandated), the right to vote clearly wins. The Clinton Administration has recognized the importance of this issue by stating in its most recent Statement of Administrative Policy, dated April 15, 1996,

The Administration strongly opposes an amendment to place restrictions on Federal Government use of languages other than English. Such an amendment would have a direct adverse effect on Federal efforts to ensure equal access to education and government services, *impair the right of citizens to vote*. . . . Moreover, it fails to do anything to increase needed opportunities for adult English literacy. English classes, not language laws, are needed to assist people who want to learn English.<sup>12</sup>

Although this statement was made in reference to possible amendments to the Senate immigration bill, the clearly stated policy concerns would certainly apply to any legislative attempt to restrict the Federal Government's use of non-English languages if the restriction were to adversely impact a citizen's right to vote. The repeal of bilingual election requirements in H.R. 351 would surely do so.

Bilingual elections have been shown to have had a positive impact in bringing LEP citizens into the democratic process. For those who have registered to vote, the bilingual election materials and ballots have allowed them to cast informed votes. Bilingual elections have not impeded integration into American society. On the contrary, bilingual election materials have allowed LEP citizens to more fully participate. That is not to say that we would have hoped that more LEP citizens would be registered to vote by this time. However, the answer is not the repeal of Section 203, but rather increasing LEP voter registration outreach efforts. The House of representatives has the responsibility to safeguard the voting rights of all LEP citizens in the United States. To repeal Section 203 would effectively disregard those rights and alienate those citizens who need protection most.

#### FOOTNOTES

<sup>1</sup>Vitus Leung and Henry Der, "Voting Rights and Political Behavior of New Californians: A Cross-Section Analysis of Limited-English Proficient Chinese American Voters in San Francisco," a study by Chinese for Affirmative Action, San Francisco, November 1993, pg. 7.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid, pg. 8.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Germaine Wong, SF Registrar of Voters, April 1996.

<sup>7</sup>Leung and Der, Id., pg. 12.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid, pg. 13.

<sup>10</sup>Ibid, pg. 16.

<sup>11</sup>Ibid, pg. 15-16.

<sup>12</sup>Executive Office of the President, Office of Management and Budget, "Statement of Administrative Policy," April 15, 1996, pg. 2.

Mr. GOODLATTE. I'd like to thank all of these members of this panel for your contribution to this hearing. Thank you for coming.

For our third panel, we will hear from the Honorable Deval Patrick. Mr. Patrick is the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice. The Civil Rights Division is responsible for enforcing the bilingual ballot provisions of the Voting Rights Act of 1965.

Mr. Patrick, welcome. We are always pleased to have you with this subcommittee. Without objection, your full statement will be made a part of the record. Please summarize your testimony in 5 minutes.

#### **STATEMENT OF DEVAL L. PATRICK, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. PATRICK. I will. Good morning, Mr. Chairman. Mr. Chairman, you are in the wrong seats.

Mr. FRANK. Yes. We're trying to correct that in November.

Mr. PATRICK. That is not what I meant.

I will summarize my testimony. I thank you very much for having me up today and for accommodating once again the tightness of my schedule and the tightness of your own. We do appreciate it. It's an opportunity for us to present the views of the Department of Justice on H.R. 351, which we understand to be a bill that would repeal the minority language provisions of the Voting Rights Act.

The Department strongly opposes the repeal of what we feel is an important and beneficial piece of legislation. I want to begin by quoting from the opening statement of Senator Orrin Hatch at a hearing held just 4 years ago on these very same minority language provisions. He said, "The right to vote is one of the most fundamental of human rights. Unless Government assures access to the ballot box, citizenship is best an empty promise."

Section 203 of the Voting Rights Act containing bilingual election requirements in an integral part of our Government's assurance that American's do have such access. Before this subcommittee, the Department of Justice in related testimony by my predecessor John Dunne, supported a 15-year extension of the minority language provisions in the strongest terms. By strong majorities both houses of Congress concurred and passed legislation extending the minority language provisions until the year 2007, when it will be next reviewed.

I come before you today to reiterate the Department's longstanding support for the minority language provisions of the Voting Rights Act, and to oppose H.R. 351 as my predecessor did in the strongest terms. The initial enactment of the minority language



provisions with the support of the Ford administration, and the subsequent extensions of those provisions with the support of the Reagan and Bush administrations enjoyed strong bipartisan support in the Congress. The Clinton administration proudly joins this bipartisan tradition. The interest in a vital democracy through access to the ballot box knows no party.

When the Voting Rights Act was first adopted in 1965, the act contained minority language voting provisions. Originally the act responded only—excuse me—contained no minority language voting provisions. Originally the act responded only to Southern resistance to voter registration and participation by African-Americans after laws previously enacted by the Congress in 1957, 1960, and 1964 proved unavailing.

Thus, it was left to the courts to address the pernicious disenfranchisement resulting from a lack of English proficiency. The Supreme Court in *Katzenback v. Morgan*, in approving the section of the Voting Rights Act which allowed Puerto Ricans to vote, even though many were unable to read and write in English, expressly rejected the notion that the denial of a right deemed so precious and fundamental in our society is a necessary or appropriate means of encouraging persons to learn English.

In 1975, Congress examined discrimination against American citizens whose mother tongue was not English, and found that they too had been the victims of systemic discrimination and exclusion in voting. Congress found that large numbers of American citizens, American citizens, whose primary language was not English had been excluded from participation in our electoral process because they could not read or understand English.

Congress also recognized that large numbers of Spanish-heritage citizens had been isolated in inferior segregated schools in the Southwest and elsewhere. As a result, they had not only been denied the opportunity to gain proficiency in English, but had emerged with higher rates of illiteracy than other citizens. Congress was also aware of the special situation of Puerto Ricans, which was addressed only in part in the Voting Rights Act of 1965, and of Native Americans, who spoke numerous languages before a word of English ever echoed across this land.

In response to this evidence, Congress added minority language provisions to the Voting Rights Act in 1975, recognizing that large numbers of American citizens, who primarily spoke language other than English, had been effectively excluded from participation in our electoral process. Section 203 is a narrowly focused response to that problem. Congress found that the denial of the right to vote among language minority citizens was directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. Generally counties in which more than 5 percent of the voting age citizens are members of a language minority also have a higher rate of illiteracy than the national average.

At the same time, however, Congress took steps in 1982 and 1992 to ensure that the provisions focused as precisely as possible on individuals who needed language assistance and would not unnecessarily burden covered jurisdictions.

I thought I would say just a word or two about our enforcement efforts, if that's all right.

Mr. GOODLATTE. Without objection. Proceed.

Mr. PATRICK. The Department of Justice has interpreted the minority language provisions to encompass voting related activities from registration to the actual casting of the ballot necessary to permit persons to understand the electoral process and to ensure their meaningful access to that process. The Department has undertaken a commonsense approach to these provisions. Our guidelines, which emphasize that covered jurisdictions need to provide minority language information and materials to those who need them, but do not need to provide them to those who do not. The measure of compliance is effectiveness.

Our experience shows that jurisdictions will be more likely to achieve this commonsense result if they work hand in hand with language minority group members. Our emphasis has been on voluntary compliance. We have had to file only 10 lawsuits to force compliance with the minority language provisions, including four since the 1992 amendments. All have been resolved successfully by agreement with the jurisdictions.

The bilingual provisions also have been enforced through the review of voting changes under section 5 of the act, separate section. Unlike the jurisdictions covered for Asian-American and Native American voters, most of the jurisdictions covered the Spanish heritage voters, that is, Texas, Arizona, and certain counties in California, Florida, and New York, have been covered under section 5 of the act since 1975. The section 5 process has been a valuable alternative to litigation, and has led to further voluntary compliance with the law.

The review under section 5 has still been most effective, and has brought about further compliance in minority language covered jurisdictions such as Texas, with its large population of Spanish-speaking citizens. In many jurisdictions, the provision of election information in Spanish has become sufficiently routine and enforcement action rarely has been necessary. Technology has made this information easier and less expensive to obtain.

We had also provided Federal observers in a number of places. They have told us what they have witnessed firsthand, the extent to which the lack of English proficiency of many citizens seriously compromises their ability to participate in the electoral process on an equal basis with other voters. The minority language provisions of the Voting Rights Act have made a real difference for minority language voters with limited English language abilities. Both rates of voter registration and actual participation have increased since the minority language provisions were enacted.

We believe there remains a continuing need for a couple of reasons. The Hispanic, Native American, Asian, and Alaskan Native populations in our country have all grown in the past decade. Although most applicants for citizenship today must satisfy an English proficiency test, it is likely that many new citizens still need some language assistance to participate meaningfully in the political process. Their citizenship alone gives them the right to vote. There is no reason why their limited English ability should frustrate that right.

Elderly and disabled American citizens who are limited English proficient, who are able to naturalize and become citizens by taking a citizenship test in their native language and didn't need to show English proficiency based on their advanced age and lengthy permanent residence in this country. Although fundamental English skills are required to pass the American citizenship test, it does not necessarily mean that the same level of proficiency would be sufficient to participate effectively in the increasingly sophisticated electoral process.

Keep in mind as I say this, that in today's electoral process, the ballot initiatives now involve complicated propositions, referenda, and constitutional issues which are far more intricate than the simple sentence format in questions on the citizenship exam for naturalization.

Significant numbers of voting age citizens still need language assistance. Puerto Ricans, who make up a significant percentage of the Hispanic population, are U.S. citizens whose native tongue is Spanish. Also, many Hispanic citizens who attended school in the southwest and Midwest as late as the 1950's were educated in segregated schools. Many U.S. citizens continue to live in segregated communities in which languages other than English predominate. Many Native Americans and some other minority language citizens, especially older persons, continue to speak their traditional languages and live in isolation from English-speaking society. For these citizens, the minority language assistance is essential if they are to participate in elections.

Mr. GOODLATTE. Mr. Patrick, we have gone well beyond what we have allowed the other witnesses. Could you summarize in an additional minute?

Mr. PATRICK. Sure. Let me just say English is universally acknowledged as the common language of the United States. I have no quarrel with that. Like the President and most Americans, I believe that you must be able to speak and read English in order to partake fully in American society. Minority language provisions were passed to help American citizens, people who work, pay taxes, go to school and strive like ordinary people, but who just don't read English well and need a hand in casting an informed vote. What could be so wrong with that? Yet H.R. 351 would resurrect barriers to equal access and participation in the democratic process for these fellow citizens at a time when the continuing need is apparent, and the reasons for repeal are unavailing. For all these reasons and others, those stated in our formal statement and others, the administration strongly opposes this bill.

[The prepared statement of Mr. Patrick follows:]

PREPARED STATEMENT OF DEVAL L. PATRICK, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before the Subcommittee to present the views of the Department of Justice on H.R. 351, a bill that would repeal the minority language provisions of the Voting Rights Act. The Department of Justice strongly opposes the repeal of this important and beneficial legislation.

Let me begin by quoting from the opening statement of Senator Orrin Hatch at a hearing held just four years ago on these same minority language provisions:

The right to vote is one of the most fundamental of human rights. Unless government assures access to the ballot box, citizenship is just an empty

promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our government's assurance that Americans do have such access. [S. Hrg. 102-1066, 102nd Cong., 2nd Sess., 1992 p.134.]

Before this Subcommittee, the Department of Justice, in related testimony by my predecessor, John Dunne, supported a 15-year extension of the minority language provisions "in the strongest terms." By strong majorities, both Houses of Congress concurred and passed legislation extending the minority language provisions until the year 2007.

I come before you today to reiterate the Department's longstanding support for the minority language provisions of the Voting Rights Act, and to oppose H.R. 351 in the strongest terms. The initial enactment of the minority language provisions with the support of the Ford Administration and the subsequent extensions of those provisions with the support of the Reagan and Bush Administrations enjoyed strong bipartisan support in Congress. The Clinton Administration proudly joins this bipartisan tradition. The interest in a vital democracy—through access to the ballot box—knows no party.

#### BACKGROUND

When the Voting Rights Act was first adopted in 1965, the Act contained no minority language voting provisions. Originally, the Act responded only to Southern resistance to voter registration and participation by African-Americans after laws enacted by Congress in 1957, 1960 and 1964 failed.

Thus, it was left to the Courts to address the pernicious disenfranchisement resulting from a lack of English proficiency. The Supreme Court in *Katzenbach v. Morgan*, in approving the section of the Voting Rights Act which allowed Puerto Ricans to vote even though many were unable to read and write in English, expressly rejected the notion that the "denial of a right deemed so precious and fundamental in our society [is] a necessary or appropriate means of encouraging persons to learn English." 384 U.S. 641, 655 (1966). Similarly, the California Supreme Court struck down English-only elections as a violation of the equal protection clause of the 14th Amendment. *Castro v. California*, 466 P. 2d 244, 258 (1970). The State subsequently enacted legislation which was more inclusive than the Federal legislation by requiring the recruitment of bilingual deputy registrars and poll workers in precincts with 3% or more non-English-speaking voting age population.

In 1975, Congress undertook a second extension of the provisions of the Voting Rights Act that gave the Attorney General authority to send Federal examiners and observers to particular jurisdictions and Section 5, which requires jurisdictions with a history of discrimination in voting to obtain preclearance of voting changes. At the same time, Congress examined discrimination against American citizens whose mother tongue was not English, and found that they, too, had been the victims of systematic discrimination and exclusion in voting.

Congress recognized that large numbers of American citizens whose primary language was not English had been effectively excluded from participation in our electoral process. Congress also recognized that large numbers of Spanish heritage citizens had been isolated in inferior, segregated schools in the Southwest and elsewhere. As a result, they had not only been denied the opportunity to gain proficiency in English, but had emerged with higher rates of illiteracy than other citizens. The rationale for the minority language provisions was therefore in part identical to, and "enhance(d) the policy of section 201 of removing obstructions at the polls for illiterate citizens." [S. Rep. No. 295, 94th Cong., 1st Sess. 1975, p.37.] Congress recognized that illiteracy should not be a bar to the constitutionally guaranteed exercise of the franchise, regardless of whether the discrimination that had contributed to that illiteracy was based on race, national origin, or language proficiency.

Congress was also aware of the special situation of Puerto Ricans, which was addressed in part by the Voting Rights Act of 1965, and of Native Americans, who spoke numerous languages before a word of English ever echoed across this land.

In response to this evidence, Congress added minority language provisions to the Voting Rights Act in 1975, recognizing that large numbers of American citizens who primarily spoke languages other than English had been effectively excluded from participation in our electoral process.

The 1975 amendments to the Voting Rights Act added two minority language provisions requiring bilingual elections. Jurisdictions that had used English-only elections, were over 5% minority in citizen voting-age population, and had a turnout rate lower than 50% were covered under Section 4(f)(4). Those jurisdictions also were brought under the provisions of the Act that required covered jurisdictions to

seek Federal preclearance of voting changes under Section 5 and authorized the use of Federal examiners and Federal observers to register voters or to monitor the conduct of elections. Section 203 required bilingual elections in jurisdictions with citizen voting age population over 5% minority language, and an illiteracy rate higher than the national average. Jurisdictions covered under Section 203 were required to conduct bilingual elections, but were not subjected to Section 5 or Federal examiners and observers.

Congress enacted Section 4(f) of the Act recognizing that "meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise." [S. Rep. No. 295, 94th Cong., 1st Sess. 1975, p.32.] Pursuant to Section 4(f), the newly added jurisdictions became subject to the Act's special preclearance provisions and were required to provide information and materials regarding voter registration, voting procedures, and elections in the language of language minority citizens as well as in English.

Congress also determined that the language minority requirements were needed to remedy language-based discrimination in areas not covered by the Act's special provisions. The 1975 Amendments, therefore, also added Section 203, which defined language minorities as "persons who are American Indian, Asian-American, Alaskan Natives or of Spanish heritage," and extended minority language requirements to additional counties. Section 203 provides that whenever a covered county "provides any registration or voting notices, forms, instructions, assistance, or other material or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

Section 203 is narrowly focused. Congress found that the denial of the right to vote among language minority citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation." 42 U.S.C. 1973aa-1a(a). Generally, counties in which more than 5% of the voting age citizens are members of a language minority also have a higher rate of illiteracy than the national average.

The minority language provisions came up for extension in 1982, at which time Congress heard substantial testimony demonstrating continued discrimination against language minority group members and found that the need for these provisions continued. At the same time, however, Congress took a further step to ensure that the provisions focused as precisely as possible on individuals who needed language assistance and would not unnecessarily burden covered jurisdictions.

Prior to 1982, the Director of the Census had counted all individuals of designated groups when determining whether 5% of the voting age citizens of a county were members of a language minority. The 1982 amendments instructed the Director to count as minority language individuals only those persons who were actually unable to understand the electoral process in English. Thus, as English-language proficiency increases among the language minority population, minority language coverage should diminish.

The minority language provisions were considered and extended again in 1992, again with one significant change. Congress determined that under the existing coverage formula, which reached only jurisdictions in which language minorities constituted 5% of the population, large concentrations of minority language citizens were not reached because—even though their absolute numbers were large—they were submerged in very large jurisdictions with substantial majority language populations, such as Los Angeles and Cook Counties. Congress, therefore, extended coverage to jurisdictions containing 10,000 or more minority language voting age citizens.

The minority language requirements apply to all of three States and to selected counties in 25 other States. Thus, for example, election officials in Texas, Arizona, and counties in California, Florida, New Mexico, and New York conduct bilingual elections in English and Spanish; officials in Alaska conduct elections in Native Alaskan languages; officials in counties in Arizona and New Mexico conduct elections in Native American languages; and officials in counties in California and Hawaii conduct elections in Asian languages. The minority language provisions address real problems in the lives of real citizens. Literally, millions of American citizens benefit directly from these provisions.

#### ENFORCEMENT

The Department of Justice has interpreted the minority language provisions to encompass voting related activities, from registration to the actual casting of the ballot, necessary to permit persons to understand the electoral process and ensure their access to that process. While these minority language requirements apply to

all covered jurisdictions, each jurisdiction must determine, working together with its affected minority language citizens, what are the particularized needs of that community and what are the most reasonable and effective measures to provide these citizens with an equal opportunity to register and cast an informed and effective ballot. The minority language provisions also provide that when the minority language is an unwritten language, as in the case of many Native American and Alaskan Native languages, the county need not provide written materials but should provide oral assistance in the minority language to those citizens who need it.

The Justice Department has undertaken a common-sense approach to these provisions. The Department's guidelines, which emphasize that covered jurisdictions need to provide minority language information and materials to those who need them, but do not need to provide them to those who do not. The measure of compliance is effectiveness. Our experience shows that jurisdictions will be more likely to achieve this common sense result if they work hand-in-hand with language minority group members.

The Department's enforcement record demonstrates our emphasis on voluntary compliance and our belief that the most effective remedies are those that are developed in common-sense consultation between jurisdictions and their minority language communities. Following the 1992 amendments, Department attorneys traveled to newly-covered jurisdictions to explain in practical terms the Act's requirements including the principles of targeting only those individuals who need information and materials, and emphasizing the primary importance of trained bilingual personnel at the polls. Letters were dispatched to each newly-covered jurisdiction. In February, 1995, the Department established a minority language task force within the Civil Rights Division's Voting Section to identify problem areas, encourage compliance and coordinate enforcement.

Although many jurisdictions responded well to the minority language provisions others have needed a push. The Department has sent out large numbers of federal observers to determine whether the minority language provisions were being followed. We have filed ten lawsuits to force compliance with the minority language provisions, including four since the 1992 amendments, all have been resolved successfully by agreement with the jurisdictions.<sup>1</sup> Over time, implementation costs have dropped and minority language citizen participation has increased. Once recalcitrant jurisdictions work cooperatively to enforce and benefit from the law.

The consent decrees we negotiated under Section 203 for the first time provide an effective mechanism to enable the minority language citizens in these counties to enter the electoral mainstream. The consent decrees are based on the extensive experience of the Department and the particularized needs and resources of the local communities. What works best for citizens of Chinese-American heritage in highly urban Alameda County may not work best in the remote reaches of New Mexico, and we have avoided requiring costly efforts that have little practical effect. The decrees specifically avoid wasteful or expensive procedures in favor of practical steps and the utilization of the minority communities' own communication systems in order to effectively provide bilingual election information to those who need it. The decrees call for constant communication between the affected citizens and their local government, and provide for flexibility to meet changing circumstances.

The bilingual provisions also have been enforced through the review of voting changes under Section 5 of the Act. Unlike the jurisdictions covered for Asian American and Native American voters, most of the jurisdictions covered for Spanish heritage voters, e.g. Texas, Arizona, and certain counties in California, Florida and New York, have been covered under Section 5 of the Act since 1975. The Section 5 process has been a valuable alternative to litigation and has led to further compliance with the law. The review under Section 5 has still been most effective and has brought about further compliance in minority language covered jurisdictions, such

<sup>1</sup> *U.S. v. City and County of San Francisco* C.A. No. C-78 2521 CFP (N.D. Cal., consent decree May 19, 1980) (Spanish and Chinese); *U.S. v. San Juan County, New Mexico*, C.A. No. 79-508-JB (D. N.M., consent decree Apr. 8, 1980) (Navajo); *U.S. v. San Juan County, Utah*, C.A. No. C-83-1287 (D. Utah, consent decree Oct. 11, 1990) (Navajo); *U.S. v. McKinley County, New Mexico*, C.A. No. 86-0029-M (D.N.M., consent decree Oct. 9, 1990) (Navajo); *U.S. v. Arizona*, C.A. No. 99-1989 PHX EHC (D. Ariz., consent agreement originally filed Dec. 5, 1988, amended Sept. 27, 1993) (Navajo); *U.S. v. Sandoval County, New Mexico*, C.A. No. 88-1457-SC (D. N.M., consent decree Sept. 30, 1994) (Navajo and Pueblo) filed prior to the 1992 amendments.

Cases subsequent to the 1992 amendments include: *U.S. v. Metropolitan Dade County, Florida*, C.A. No. 93-0485 (S.D. Fla., consent decree March 11, 1993) (Spanish); *U.S. v. Socorro County, New Mexico*, C.A. No. 93-1244-JP (D. N.M., consent decree Oct. 22, 1993) (Navajo); *U.S. v. Cibola County, New Mexico*, C.A. No. 93-1134 (D. N.M., consent decree Apr. 21, 1994) (Navajo and Keres); *U.S. v. Alameda County, CA* C.A. No. C-951266 SAW (N.D. Cal., consent decree Jan. 22, 1996) (Chinese).



as Texas with its large population of Spanish-speaking citizens. In many States, the provision of election information in Spanish has become sufficiently routine that enforcement action rarely has been necessary. Technology has made this information easier and less expensive to obtain and to provide. The first lawsuit brought by the Department following the 1992 amendment of the Act, was in Dade County, Florida, a jurisdiction that is not covered under Section 5. A settlement agreement was reached with Dade County early in 1993 to ensure the adequate provision of election information in Spanish.

Enforcement actions by the Department of Justice have been based on detailed incontrovertible evidence of the denial of the right to vote of United States citizens. Since 1975, federal observers, where other provisions of the Voting Rights Act allow, have monitored elections to determine the extent to which language minority citizens were able to receive materials, instructions and assistance in minority languages. A total of 2,218 federal observers have served in this effort so far. They have been sent to 12 different counties in six States—Arizona, California, New Mexico, New York, Texas, and Utah—and have monitored the treatment of Native American voters, Hispanic voters and Asian-American voters.

These federal observers have witnessed first hand the extent to which the lack of English proficiency of many citizens seriously compromises their ability to participate in the electoral process on an equal basis with other voters. The minority language provisions of the Voting Rights Act have made a real difference for minority language voters with limited English language abilities. Both rates of voter registration and actual participation in elections by minority language individuals have increased since the minority language provisions were enacted. Our democracy derives strength from the participation of as many of its citizens as possible.

#### THE CONTINUING NEED

The need for minority language voting provisions clearly has not diminished since 1992. The Hispanic, Native American, Asian and Alaskan Native populations in our country have all grown in the past decade. Although most applicants for citizenship today must satisfy an English proficiency test, it is likely that many new citizens still need some language assistance to participate meaningfully in the political process. Their citizenship alone gives them the right to vote, and there is no reason why their limited English ability should frustrate that right. Elderly and disabled American citizens who are limited English proficient were able to naturalize and become citizens by taking a citizenship test in their native language and did not need to show English proficiency based on their advanced age and lengthy permanent residency in this country. (8 U.S.C. § 1423). Although fundamental English skills are required to pass the American citizenship test, it does not necessarily mean that the same level of proficiency would be sufficient to participate effectively in the increasingly sophisticated electoral process. Keep in mind that in today's electoral process the ballot initiatives now involve complicated propositions, referenda, and constitutional issues, which are far more intricate than the simple sentence format and questions on the citizenship exam for naturalization.

Significant numbers of voting age citizens still need language assistance. Puerto Ricans, who make up a significant percentage of the Hispanic population, are U.S. citizens whose native tongue is Spanish. Also, many Hispanic citizens who attended school in the Southwest and Midwest as late as the 1950's were educated in segregated schools. Many United States citizens continue to live in segregated communities in which languages other than English predominate.

According to the 1990 census, for example, in Cook County, Illinois, 87,977 voting age Hispanic citizens lack sufficient English fluency to participate in English only elections; in Queens County, New York, 19,162 Chinese-American voting age citizens also lack such fluency. In Los Angeles County, 39,886 Chinese American voting age citizens, and 265,350 Hispanic voting age citizens are limited-English proficient. Voter turnout among Hispanics still lags behind that of our majority citizens; whatever the various reasons for this gap, the persistence of this gap cautions strongly against repealing minority language assistance that may help in overcoming these obstacles.

A study by the Mexican American Legal Defense and Educational Fund, for example, found that 70% of monolingual Spanish-speaking American citizens would be less likely to register to vote if minority language assistance were not available and 72% of these limited English proficient citizens would be less likely to vote if bilingual ballots were unavailable.<sup>2</sup>

<sup>2</sup>R. Brischetto, "Bilingual Elections at Work in the Southwest," MALDEF pp. 68, 100 (1982).

Native Americans present a unique situation because of their history, and offer further compelling reasons for the protection of the minority language provisions. Native Americans did not immigrate to this country, but rather this country came to them. They are our nation's first Americans who already lived in this land and spoke many languages before English speaking settlers arrived. It is the declared policy of the U.S. Government, as enacted by Congress, under the Native American Languages Act, to encourage the use and preservation of Native American languages, and the Act recognizes that the use of Native American languages should not be restricted in any public proceeding. 25 U.S.C. §§ 2901, 2904.

Many Native Americans and some other minority language citizens, especially older persons, continue to speak their traditional languages and live in isolation from English speaking society. For example, in both Apache and Navajo Counties, Arizona, more than one-half of the voting age Navajos lacked sufficient English fluency to participate in English only elections as of the 1980 census. As of the 1990 census, 49 percent of the voting age Native American citizens in Apache County, and over 50 percent of the voting age Native American citizens of Navajo County continue to be limited English proficient. According to the 1990 census, in Pima County, Arizona, 2,173 Navajo citizens of voting age were limited English proficient and became covered by the Act's requirements for the first time in 1992. For these citizens, the minority language assistance is essential if they are to participate in elections. It is a matter of fundamental fairness; it is the responsibility of this country to ensure that those it has embraced as citizens can participate meaningfully in elections—the activity of citizens in a democracy that is preservative of all other rights of citizenship.

The repeal of the minority language protections of the Voting Rights Act would disenfranchise American citizens who only recently have had the opportunity to engage meaningfully in participatory democracy. Minority language provisions were passed to help American citizens, who work and pay taxes but have not mastered English well and need some assistance in being able to cast an informed vote.

Many of these citizens have some English speaking proficiency, but their English reading ability is insufficient to comprehend complicated ballots and written voting information. Some are older limited English proficient Americans, who are least likely to learn English as a second language, and many are poor and poorly educated. Repeal of the minority language provisions would impose an extreme burden on these American citizens in particular.

#### THE COST/BURDENSOMENESS

Far from being burdensome, bilingual election provisions have been adopted voluntarily by a number of jurisdictions which are not even covered under the minority language provisions. The State of New Mexico, for example, long has conducted elections bilingually. The City of Los Angeles voluntarily provides information in Korean in addition to the languages which are mandated under Section 203. Santa Clara County, California voluntarily provides election information for its citizens of Asian heritage in their native languages. As noted, California also had a state Supreme Court decision, which lead to the enactment of state legislation calling for bilingual elections, that helps encourage jurisdictions to provide multilingual assistance where needed but not required.

As to the cost of enforcing the minority language provisions, Congress examined the cost of bilingual compliance when it extended Section 203 in 1982 and 1992 and concluded that it was not burdensome. The 1992 Congress was assisted by the report of the General Accounting Office published in 1986, which concluded that compliance costs were not burdensome. The GAO reported that for jurisdictions that reported knowing their costs, the total costs for written language assistance as a percentage of total election costs was 7.6%.<sup>3</sup> Moreover, the report noted many costs are one-time or occasional (such as those explaining voting rules and procedures) rather than recurring routinely.

The minority language voting provisions require the use of minority languages in order to enable minority language citizens to be effective voters; they do not require jurisdictions to spend money that would not further this goal. Covered jurisdictions are encouraged to target their bilingual assistance and materials to those who need them and to tailor cost-effective programs. They are encouraged to work with local minority language communities to determine actual local needs, on a precinct-by-precinct basis.

<sup>3</sup>United States General Accounting Office, *Bilingual Voting Assistance: Cost of and Use During the November 1984 General Election*, GGD-86-134BR, p. 16.

As an example, the program adopted by Alameda County, California under the settlement agreement, provides for bilingual poll officials and bilingual election information for the 11,394 Chinese-speaking citizens of Alameda County. There is no extra cost for hiring bilingual poll workers because poll workers must be hired in any event, and in a bilingual community, poll workers could easily be drawn from that community. Indeed, state law requires that bilingual poll officials serve these communities. The program is marked by efficiency and effective targeting of information and materials to those who need them. It is also flexible and adapts to changing circumstances.

The minority language requirements are finally becoming an accepted and beneficial part of the usual electoral process in jurisdictions in which many voters need this assistance. The minority language provisions not only increase the number of registered voters, but permit voters to participate on an informed basis. The minority language provisions not only allow voters who need language assistance to be able to read ballots to know who is running for office, but also to understand complex voting issues, such as constitutional amendments or bond issues, that may have just as profound an effect on their lives as the individuals elected to office.

#### CONCLUSION

English is universally acknowledged as the common language of the United States. Like the President and most Americans, I believe that you must be able to speak and read English in order to fully partake in the bounty of American life.<sup>4</sup> At the same time, we should recognize, respect and celebrate the linguistic and cultural variety of our society. H.R. 351 would resurrect barriers to equal access to and participation in the democratic process for American citizens who do not speak English very well at a time when the continuing need is apparent and the reasons for repeal are unavailing. Because more than our language unites us, because we are united as Americans by the principles of tolerance, speech, representative democracy and equality under the law and because H.R. 351 flies in the face of each of these principles, the Administration strongly opposes this bill.

Mr. GOODLATTE. Thank you, Mr. Patrick. I'd like to ask you about a couple of specific instances where it appears to me there have been abusive uses of the bilingual voting requirements as a part of the Voting Rights Act.

On November 19, 1994, the Judson Independent School District located near San Antonio, TX, held a local school bond election which gave voter approval to a \$45 million bond issue by a two to one margin. The Voting Rights Section within your Department invalidated the election post hoc because a private PAC did not meet the bilingual voting requirements, which are the subject of our hearing today.

Your Department ruled that the PAC's activity were subject to the act's requirements because of its close association with members of the school district. Rather than appeal the after the fact ruling, the school district held a second special election in late January 1995, due to the urgent need for school bonding authority for new schools. That time, voters approved the proposed bond issue by a three to one margin. The Justice Department stood by its ruling in a subsequent letter. I quote, "Our further review of this issue confirms that the committee was closely aligned with the school district. The committee was formed at the instigation of the school district. The school district played a major role in selecting

<sup>4</sup> Bilingual ballots will not discourage the learning of English by limited English proficient citizens any more than a ban on literacy requirements for voting discourages literacy. In fact, there is an overwhelming demand for English as a Second Language (ESL) classes in communities with large language minority populations. For example, in Los Angeles, the demand for ESL classes is so great that some schools operate 24 hours per day, and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for ESL classes. Studies show that today's immigrants are learning English just as fast as immigrants of previous generations. See e.g. Kevin F. McCarthy and R. Burciaga Valdez, *Current and Future Effects of Mexican Immigration in California*, (The Rand Corp. 1985) p. 61.

the committee's members. District officials then provided important advice and assistance to the committee regarding the committee's activities."

Mr. Patrick, at best I can see only that this private PAC benefited from advice and counsel with members of the school district. Because of that relationship, the Voting Rights Act can in your opinion point to the relationships and actions of private individuals and invalidate an election after the fact?

Mr. PATRICK. Well, I'll tell you what I know about that, what I can recall about that matter. Which is that the facts indicated to us that the school was in fact distributing the private PAC's information. That question is actually a question directly addressed and in relevant ways by the Supreme Court recently in the case out of Virginia involving the Republican primary during the Ollie North campaign. The view that we expressed in our objection letter was accepted by the Supreme Court as a constitutional and statutory matter in that recent decision. So I think we were right on the law in that case.

Mr. GOODLATTE. Well, given what you might anticipate are my reservations about the decision in Virginia, are we now going to take that, in your opinion, one step further and require that political action committees that raise money and expend them in election campaigns have got to comply with the bilingualism requirements of the Voting Rights Act?

Mr. PATRICK. No. I don't think anybody is prepared to make a categorical conclusion like that.

Mr. GOODLATTE. It appears that that's what was done by your Department in this case.

Mr. PATRICK. What you just quoted was not a categorical statement of anything. It was a resolution of a particular matter based on particular facts. That, I think is exactly what we're supposed to be doing in the Department of Justice.

Mr. GOODLATTE. But you ruled that a private PAC's activities—

Mr. PATRICK. Based on those facts.

Mr. GOODLATTE. But a private PAC engaged in fundraising activities and election campaign activities, must comply with the bilingual provisions of the Voting Rights Act under these circumstances. It seems to me we're down an awfully slippery slope toward requiring any kind of political campaign to participate in those requirements.

Mr. PATRICK. I certainly hope not, because that is not where we intended to go. I am telling you what our ruling was. The ruling was that the facts indicated in that case, that the private PAC wasn't acting so private. That in fact the school board was—I shouldn't use this term, but was in fact in league with the private PAC. In those kinds of circumstances, because the private PAC was serving as an arm or a wing, if you will, of the public entity, the Voting Rights Act reached it. I believe that the Supreme Court's recent ruling, whether any of us like it or not, supports that view.

Mr. GOODLATTE. Political campaigns often consult with people who are in office that they may be supporting or opposing in their efforts for election. I don't see where you can draw a bright line that would allow you to say that this particular case, because of

certain associations would bring you under coverage and not do so in the next case down the road.

Mr. PATRICK. What I am trying to say to you, Mr. Chairman, is that you were the one drawing the bright line. We are not drawing the bright line. We are not—

Mr. GOODLATTE. We think you need to draw a bright line, and it ought not to include private PAC's. I think frankly it's a justification for eliminating the requirement all together, if there's going to be that much governmental interference with the local election process.

Let me go onto the second point. In a few minutes we are going to hear from Yuba County, CA, Clerk Frances Fairey. In her prepared statement, Clerk Fairey states that she has had only one request in 16 years as clerk for bilingual voting materials. Nonetheless, Yuba County must seek Federal preclearance for any voting changes because it was swept up by the mechanical formula of section 4-F-4. This means if Clerk Fairey wants to split a precinct because it has become too large, to make it more convenient for people to vote by creating two precinct polling places, a task for local government, if there ever was one, in my opinion, she must first seek the approval of the U.S. Department of Justice.

Keeping in mind that Clerk Fairey has received only one request in her 16-year tenure, do you believe it is right that Yuba County, CA, is subject to that portion of the Voting Rights Act that commands Federal preclearance of voting changes? Without objection, I'll give myself 2 additional minutes.

Mr. PATRICK. It's great to be Chair. We support that provision of the Voting Rights Act. I would be surprised, and I don't know what the particular circumstances are of Yuba County, I would be surprised if the requirement to submit for preclearance has created any significant burden at all in those circumstances. You understand that we get several thousand submissions under section 5 and section 4 together in a year. A fraction of those result, a small fraction result in objections.

Mr. GOODLATTE. We'd like to lighten that burden for you.

Mr. PATRICK. I think it would be a mistake, because I think for the reasons I've said, I think if you don't take care not to sweep up into your reform efforts jurisdictions where there is a genuine and serious need or where Congress recently has recognized the potential for a genuine and serious need, you have done a great disservice to fellow citizens.

Mr. GOODLATTE. Well, I will tell you that quite frankly, I think this is massive Federal Government intrusion in local elections in an area where it is highly unnecessary, and in fact, I think many places, counterproductive.

Mr. Frank.

Mr. PATRICK. You understand we disagree.

Mr. FRANK. Let me begin on a point where I would agree in part with the majority. It does seem to me we make mistakes, those of us who defend the basic law to defend every jot and tittle, and then you sometimes wind up defending the weakest links. For instance, the situation like this, there would seem to me to be a compromise. Instead of requiring preclearance, you could have a complaint generated system so that if there were no complaints, then they

wouldn't need anything. I would ask you to look into that, whereby if there was a complaint that could trigger a preclearance. But in this situation, apparently there would be very unlikely to be a complaint, and I think that would be a way that you would still retain the residual jurisdiction. But instead of everybody having to pass paper back and forth, it could be complaint triggered, if nobody complains.

Mr. PATRICK. I should be clear that a submission in a case like the Yuba County matter, at least as I understand it, is only evoked when there is a voting change, and the change—and the submission is a letter to which we respond by a letter.

Mr. FRANK. I understand that. But what you are doing is making yourself vulnerable because people can complain. I realize—look, I think this whole thing is the greatest molehill search I have seen in a year and a half. We've got all this discrimination in the world, and this committee has got nothing better to do than to fly speck this thing. It is fly specking. It is driven in part because people are offended by the notion that some people don't want to speak English.

Mr. GOODLATTE. Would the gentleman yield for a question about his suggestion?

Mr. FRANK. Yes.

Mr. GOODLATTE. Which I think is a good suggestion. Would you apply that to all aspects of the Voting Rights Act?

Mr. FRANK. No. Not to all aspects. I think there's an intimidation factor sometimes. I'd have to look at that. I am talking about one where you say there really is a diminimus situation. But in other situations, look, we've had this problem and the Voting Rights Act grew up in the South because the Federal Government massively interfered because people were being massively killed if they tried to vote in Mississippi and Alabama within my adult lifetime. Black people were being maimed and killed in Mississippi and Alabama. I was there in the summer of 1964 when blacks still could not vote in Mississippi, except at peril of their life. So I'd have to go case by case. But I'd be willing to work with you on some kind of complaint generation in what we think are the diminimus cases. I'd have to be shown that there was no fear of intimidation.

Then you're going to go back and say—it bothers some people apparently, that not everybody speaks English all the time. I think that there ought to be an incentive to speak English. There is one, the economy. There is an overwhelming incentive to speak English in this country.

On the other hand, I disagree with those who proudly say I was not allowed to speak a foreign language in my home, because we suffer in this country, it seems to me, much more from monolingualism than from bilingualism. This is not fully within the jurisdiction of this country, but we are the only country in the world where the average highly educated person speaks only one language. I am embarrassed myself to be monolingual, at best.

[Laughter.]

Mr. FRANK. I wish that my parents, not being part of that generation that was made to feel guilty, had spoken more Yiddish around me so I knew more than just a few Yiddish words. I think it's a great asset to this country. I represent an area where there



are a large number of people who speak Portuguese quite fluently. They also speak English. Several members of my staff are completely bilingual in Portuguese and in English. That's a great benefit to me. Not simply when we are dealing with people who are Portuguese, but there is something about knowing another culture that is beneficial. This notion that we ought to be somehow discouraging people from teaching their children to be bilingual I think is a grave error.

Now whether or not, and what's the best way to deal with helping people learn English in schools, I'm not an education expert. It's not our jurisdiction. I really don't know a lot. I'd be willing to leave that to the local schools. But as far as this is concerned, the upset that is generated because we are making a fairly small accommodation, and I think it is very clear this goes particularly to the benefit of older people who have become citizens who are not fully comfortable yet in English. I don't think this is that important for younger people. It may be temporarily, but they learn in my experience. You get older people, particularly when we have complicated referenda questions, why anyone gets so exercised about the fact that we've got some 70-year-old read a referendum question in his or her native language baffles me. I don't think there's a logical argument for it.

I do not think if you were sitting around here as the Subcommittee on the Constitution and you made a list of the 100 most important issues that were affecting constitutional rights in America, you would come up with this absent some obsession with the notion that—it's kind of like what Macon said about puritanism. The objection that someone somewhere out there might be having a good time. What we're motivated here is kind of a linguistic puritanism. The notion that somewhere somehow somebody is accommodating some 70-year-old who isn't speaking English at all times is what drives this. This is such a trivial, and even we've been told I don't know, how many few cases Mr. Patrick talked about.

We talked about people have to write letters from Yuba County. I'm sorry they have to write letters from Yuba County. I'm willing to save Yuba County the stamps. I don't think it's a great problem for Yuba County. I don't know how often they split precincts. I am willing to relieve the people of Yuba County from the enormous burden of having to write a letter to Mr. Patrick every time they want to split a precinct. If that will greatly enhance their lives, I'm happy. I don't think it makes very much difference.

But to have this kind of subject is a problem. It's a particular problem to me, I would say, if I could just have 30 more seconds, Mr. Chairman.

Mr. GOODLATTE. No objection. The gentleman will have 2 additional minutes.

Mr. FRANK. Because what I believe motivates this is an animus against bilingualism. Yes, people ought to be speaking English. But an ability of people to speak more than English is an asset to this country. We ought to be stressing it. We ought to be expanding it. We ought to be taking advantage of the fact that people come here who are in fact fluent in another language and encourage them to add English to that, but not, as one of the earlier witnesses said, be proud of adding English but making sure that people don't as-

simulate and take advantage of the ability to learn the other language at home.

So I think we have had a very misguided set of choices in picking hearings here, as I said. Maybe there is still some discrimination based on language, but you would never know it from this subcommittee, because all we're doing is focusing on what some people object to in the efforts to overcome discrimination based on language. To single this one out seems to me not just a waste of time, but really bespeaks a hostility to what ought to be something that we could make point of pride. Thank you for the extra time.

Mr. GOODLATTE. Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

Mr. Patrick, do you know how many people utilized bilingual ballots in the last election?

Mr. PATRICK. I don't know the answer to that. In many jurisdictions they use a card which has no language on it at all. The card is placed on top of a machine. They hand out a booklet to different voters depending on their proficiency in reading English as distinguished from speaking. Reading more comfortably and confidently in their common language. So they are printing a set of uniform materials. Then the ballots are made available depending on. I just don't know what the level of the requests are.

Mr. CANADY. Do you have any statistics on that from any jurisdictions?

Mr. PATRICK. Not at my fingertips, no.

Mr. CANADY. Does the Department have that?

Mr. PATRICK. I don't think we do, but I think we could probably develop some projections, if that would be helpful.

Mr. CANADY. If you could provide that to us, I think that might be helpful to us. I don't have any additional questions. Thank you for being here.

Mr. PATRICK. Mr. Chairman, I would also be happy to talk further with the staff or with you about the Yuba County matter or the other one when I am better informed about particular matters, and clearly with the jurisdictions.

Mr. GOODLATTE. We would welcome the opportunity to do that, and discuss any possible improvements that might take place in the act based upon Mr. Frank's point. We thank you very much for your participation today.

Mr. PATRICK. Thank you.

Mr. GOODLATTE. On our final panel today, we will hear from Frances Fairey of Marysville, CA. In 1980, Ms. Fairey was appointed as clerk, recorder, and registrar of voters for Yuba County, CA, and has been reelected to this position three times.

Following Mrs. Fairey will be Antonia Hernandez. Ms. Hernandez is president and general counsel of the Mexican American Legal Defense and Education Fund.

Concluding this panel will be Linda Chavez, president of the Center for Equal Opportunity. She is the author of "Out of the Barrio Toward a New Politics of Hispanic Assimilation." She frequently writes on civil rights and public policy issues for many well known publications.

Without objection, all of your statements will be made a part of the record. Please summarize your testimony in 5 minutes.

We do not know where Ms. Fairey is right now. So we'll go right ahead to Ms. Hernandez. Welcome, and your statement will be made a part of the record. Please limit your remarks to 5 minutes.

**STATEMENT OF ANTONIA HERNANDEZ, PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

Ms. HERNANDEZ. Thank you. Thank you for the invitation to present our views. My name is Antonia Hernandez. I am the president and general counsel of the Mexican American Legal Defense Fund.

We have been involved in the area of voting and the participation of our community for over 28 years. We have been involved in the issue of redistricting, census and voter participation, and have been involved in some of the major litigation at the Supreme Court and at the various courts of appeals dealing with the rights of Latinos in this country.

I am here to strongly urge you to oppose H.R. 351, the Bilingual Voting Requirement Repeal Act of 1995. The right to vote is a fundamental right. A right that more and more Latinos are finally embracing in large numbers. Since 1975, the bilingual provisions have had strong bipartisan support. I was personally involved in the renewal of the Voting Rights Act in 1982, and MALDEF worked closely with the Justice Department during President Bush's administration to renew the bilingual provisions in 1992. The renewal passed with strong bipartisan support.

The bilingual provisions are necessary to thousands of limited English proficient citizens. Voting and participating in the political discourse of this country is one of the strongest vehicles for inclusion and assimilation into the mainstream of American society.

I'd like to state that in listening to the prior testimony about the knowledge base of Latino voters and Spanish-speaking voters, I'd like to let the committee know that Spanish-language media, whether it be in print, in radio, or visual television, is in its height of professionalism. In fact, if you look at Los Angeles County, the most watched television network news station in Los Angeles County is in Spanish language. The amount of information given to Spanish-language readers is of the highest qualities. If you speak to any of the individuals who use the bilingual ballots, you will find that these individuals understand the intricacies of what they are about to vote. And in fact, in California, as you know, California voters have an undue burden of having to decipher extremely sophisticated initiatives and issues that must be voted upon.

Those who use bilingual materials are mostly elderly and newly naturalized citizens who are eager to vote, as well as citizens who were not afforded an education and who are now elderly. It is not true that Latinos do not want to learn English. The empirical data to support this contention that Latinos do not want to learn English, on the contrary, all of the empirical data is that indicates that Latinos want to learn English and that newly naturalized citizens want to learn English. In fact, there is data and it is quoted in my written testimony, that Latinos, Mexican-American immigrants,

are learning English faster than other immigrant waves in the past.

Our community understands that English is the language of this country. In fact, there is a greater motivator for learning English. That is the economy. You speak to any Latino and they will tell you that the ability to earn and to increase one's earning power is based on one's ability to learn the English language.

In Los Angeles County, there are English ESL schools that function 24 hours a day. There are waiting lists of over 40,000 waiting to get into these classes. In New York, in some instances, the waiting period for getting into these classes are over 18 months. The bilingual provisions of the Voting Rights Act will do nothing to deter the interest, the willingness of individuals to learn the English language. The bilingual provisions are meant to assist citizens who want to vote, who want to exercise their right to vote. The provisions have in fact facilitated the inclusion of Latinos into the voting process.

The Latino voters in the Southwestern States of Arizona, California, Colorado, New Mexico, and Texas, have doubled its registered Latino voters between 1976 and 1988. During the period from 1980 to 1990, Latino participation increased five times the rate of the rest of the country. Most specifically, data compiled by the Southwest Voter Institute through its exit polling of Latino voters in the southwest, indicate significant use of bilingual ballots.

Let me conclude—

Mr. GOODLATTE. Excuse me, Ms. Hernandez, we'll give you 2 additional minutes if you could summarize your remarks.

Ms. HERNANDEZ. Thank you. In the 1994 and 1990 exit polls, 23 percent of Latinos who voted in Texas used bilingual election material. Currently close to one million individuals are waiting in line to become citizens. In L.A. County, the wait for citizenship and those people once they become citizens are registering to vote. Both the Republican Party and the Democratic Party have registration booths right outside of the naturalization sites.

In conclusion, let me give you a model of bilingual, the use of bilingual ballots where it has not been an issue and it has demonstrated that it works, New Mexico. New Mexico for over 50 years has had bilingual ballots. It is the State where the highest percentage of Latino participation, and I will point out, that New Mexico is not an immigrant receiving State. It is the only State that has given us two U.S. Senators. New Mexican population, the Latino population, a large percentage trace their ancestry back to the 1500's. So that bilingual ballots can work. They are targeted. They are cost effective.

I do site some statistics, Mr. Canady, in my written testimony about the usage and the cost in L.A. County and in other jurisdictions. If you would like some more information, we would be more than happy to submit it. Thank you.

[The prepared statement of Ms. Hernandez follows:]

PREPARED STATEMENT OF ANTONIA HERNANDEZ, PRESIDENT AND GENERAL COUNSEL,  
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Chairman Hyde and distinguished members of the Judiciary Committee, I am Antonia Hernandez, President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national civil rights orga-

nization established in 1967, working to protect and advance the civil rights of the nearly 25 million Latinos in the United States, through education, advocacy and legal action. MALDEF is active in the areas of education, employment, immigrants' rights political access and language discrimination.

I appreciate the opportunity to appear before you today to strongly urge opposition to the bill considered today, H.R. 351, the "Bilingual Voting Requirements Repeal Act of 1995." The right to vote is one of our most cherished and fundamental rights, and since 1975, Congress has recognized the need to ensure that all American citizens have access to that right through the language provisions of the Voting Rights Act.<sup>1</sup> For over twenty years, MALDEF and others have continuously supported Congressional provisions that successfully protect and preserve access to the democratic process through language assistance voting provisions. I am here today to urge Congress to avoid current politically charged partisan efforts that would divide our nation, but rather, continue its commitment to include all citizens in the political process through exercising their fundamental right to vote.

#### THE NEED FOR LANGUAGE ASSISTANCE

The right to vote is guaranteed to all U.S. citizens by the Fifteenth Amendment to the U.S. Constitution. As stated in Section 1,

[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race [or] color. . . .<sup>2</sup>

Coupled with the importance of the act of voting, The Supreme Court has long held that the right to vote implies the right to cast an informed and "effective" vote.<sup>3</sup> To that end, the Court has articulated that Constitutional protection extends "to all, to those who speak other languages as well as those both with English on the tongue."<sup>4</sup>

Unfortunately, as Congress and the courts have repeatedly found, barriers to casting an informed and effective vote continue for citizens of language minorities. In 1975, Congressional hearings brought forth an overwhelming showing that a substantial number of language minority citizens<sup>5</sup> were being denied effective participation in the voting process. The 94th Congress found that:

[V]oting discrimination against citizens of language minorities is pervasive in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language . . . [W]here State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation.<sup>6</sup>

<sup>1</sup>See Section 4(f)(4), Section 203, Pub. L. No. 94-73 (Aug. 26, 1992, 89 Stat. 400, codified at 42 U.S.C. §§1973b(f) and 1973aa-1a; Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et. seq.*)

<sup>2</sup>See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (right to vote is "a fundamental right" because it is "preservative of all rights.")

<sup>3</sup>See, e.g., *Garza v. Smith*, 320 F. Supp. 131 (W.D. Texas 1970), *vacated and remanded for appeal to the Fifth Circuit*, 401 U.S. 1006 (1971), *appeal dismissed for lack of jurisdiction*, 450 F.2d 790 (5th Cir. 1971) ("[T]he 'right to vote' additionally includes the right to be informed as to which mark on the ballot, or lever on the voting machine, will effectuate the voter's political choice."); *Arroyo v. Tucker*, 372 F.Supp. 764, 767 (E.D. Pa. 1974) (The "right to vote means more than the mechanics of marking a ballot or pulling a lever.")

<sup>4</sup>*Meyer v. Nebraska*, 262 U.S. 390, 401 (1923); *Arroyo v. Tucker*, 372 F. Supp. 764, 767; *Torres v. Sachs*, 381 F.Supp. 309, 312 (S.C.N.Y. 1974) ("In order that the phrase 'the right to vote' be more than an empty platitude, a voter must be able effectively to register his or her political choice."); *Puerto Rican Organization for Political Action v. Kasper*, 490 F.2d 575, 580 (7th Cir. 1973) (stating that "[t]he right to vote" encompasses the right to an effective vote. If a person who cannot read English is entitled to oral assistance, if a Negro is entitled to correction of erroneous instructions, so a Spanish speaking Puerto Rican is entitled to assistance in the language he can read or understand.")

<sup>5</sup>The Voting Rights Act and its implementing regulations define "language minority" or "language minority group" as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." See e.g., 28 C.F.R. §55.1 (1991).

<sup>6</sup>See 42 U.S.C. §1973b(f)(1)

At that time, Texas and a number of states were found to have the functional equivalent of maintaining an English language literacy test, by printing all registration and voting materials only in the English language. Both the courts and Congress found a continuing need for bilingual assistance in order to guarantee the participation of language-minority citizens in the electoral process.<sup>7</sup> Thus, Congress enacted the language assistance provisions to the Voting Rights Act.

Subsequent hearings by this body and others have documented abuses that have continued in jurisdictions that continue use of English-only elections and are not cured by language assistance provisions. Since its original findings in 1975, Congress has revisited this issue at reauthorization of the language assistance provisions, and as found most recently in 1992 that:

. . . the use of English, as the sole language throughout the electoral process, continues to be discriminatory and has a direct and invidious impact upon the ability of such populations to participate actively in the electoral process.<sup>8</sup>

In response to continued barriers to registration and voting, Congress has continued its support of language assistance provisions to the Voting Rights Act. Rather than uphold language as a means of systemic and pervasive discrimination, Congress has consistently upheld the scheme created to insure access to the ballot for all Americans, namely reauthorization of language assistance provisions.

#### TARGETED LANGUAGE ASSISTANCE IN THE ELECTORAL PROCESS

##### *A. Provisions Provide Limited Assistance Based on Congressionally Approved Factual Formulae*

Based on a showing of continued need for assistance, Congress has extended language assistance provisions until the year 2007. Currently, language assistance is provided through two separate provisions to the Voting Rights Act, Section 4(f)(4) and Section 203. Both provisions require language assistance *for covered jurisdictions only*. Language assistance is not required for every jurisdiction, but only those provided by the two separate provisions. Both sections provide formulae that are applied only in specific and exceptional situations.

Section 4(f)(4) targets jurisdictions that have historically prevented blacks and other minorities from voting through the use of exclusionary "tests or devices" such as literacy tests. Under this section, because of proven historical discrimination, an English-only election constitutes an exclusionary "test or device" for which the special remedy of language assistance is required. The formula to determine coverage under this section is limited specifically to a State or political subdivision where a showing is made as follows:

- (i) over 5% of the voting-age citizens were, on November 1, 1972, members of a single language minority group;
- (ii) registration and election materials were provided only in English on November 1, 1972; and
- (iii) less than 50% of citizens of voting age were registered to vote or voted in the November 1972 Presidential election.

Additionally, this section is subject to general provisions and limitations under the Voting Rights Act, including the requirement that any changes in voting procedures in a covered jurisdiction must be preapproved by the U.S. Department of Justice or Federal district court.

Section 203 offers remedial measures similar to Section 4(f)(4), but differs slightly in purpose and scope. Historically, Section 203 has sought to provide Constitutional protections of the Fourteenth and Fifteenth Amendments<sup>9</sup> by prohibiting discriminatory practices and procedures that effectively exclude language minorities from participating in the electoral process. Section 203 takes comprehensive, yet focused, consideration of discriminatory practices such as unequal educational opportunities that result in high illiteracy rates and low voter participation.

Section 203 jurisdiction provides a fluid response to current situations in a particular community, rather than responding to discriminatory voting practices of a

<sup>7</sup> 42 U.S.C. §1973b(f)(1), stating that "[T]he Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only election, and by prescribing other remedial devices."

<sup>8</sup> See, Voting Rights Language Assistance Act of 1992, House Rep. No. \*\*102d Congress, 2d Sess. 7 (1992).

<sup>9</sup> U.S. Constitution, Amend. XIV (providing equal protection), Amend. XV (*inter alia*, guarantees the right to vote without regard to race, color, or previous condition of servitude.)



particular year. Section 203 extends language assistance where either of the following two conditions exist:

- (a) Where any single language minority group voting-age citizen population is five (5) percent or more of the total adult-citizen population; or
- (b) Where there are at least 10,000 language minority voting-age citizens and the statewide or political jurisdiction illiteracy rate is greater than the national illiteracy rate.<sup>10</sup>

The formula provided in Section 203 is targeted to specific language minority communities that can show a need based on both language skills coupled with high illiteracy rates that are common to language minority communities and are due to persistent educational disparities. Coverage is defined by population percentage determinations as defined and enumerated by the Director of the Census, U.S. Bureau of Census, through the most recent decennial census.

Thus, English proficiency and determinations of the needs of a particular community are founded on specific factual findings, related to both the need for assistance as well as fair and reasonable means of implementation. Enforcement is not, by any means, arbitrary or without foundation. Instead, registration and voting assistance are based on specific statistical data, related directly to either proven historical discrimination in that jurisdiction or the actual English speaking and comprehension of the community. Targeted language assistance allows redress of actual and very limited historical discrimination, as well as the ability of Section 203 jurisdictions to move in or out of coverage, thereby responding to communities that may no longer have a need for language assistance.

*B. Targeted Language Assistance is Cost Effective and Not a Financial Burden*

Previous Congressional findings have shown that costs of language provision compliance are not burdensome. The House Judiciary Committee stated that:

The Committee record overwhelmingly shows that where language assistance in registration and voting is implemented in an effective manner, the cost accounts for only a small fraction of total election expenses. This fact is particularly evident in recent elections which indicate that costs have decreased significantly over the years.<sup>11</sup>

The General Accounting Office conducted a study of the costs and uses of bilingual ballots during the 1984 general election in jurisdictions covered by the 1975 language assistance provisions of the Act.<sup>12</sup> According to the GAO report, 205, or 79 percent of the 259 jurisdictions reported that providing oral assistance on election day in non-English languages cost them nothing.<sup>13</sup> The costs for written assistance, such as providing pamphlets and other voting materials in non-English languages, were not prohibitive or burdensome, as shown by the 18 jurisdictions that incurred no additional costs in providing written assistance.<sup>14</sup> For 101 jurisdictions reporting a total cost of approximately \$388,000 for written assistance, this represented a mere 7.6% of total costs to these jurisdictions for the November, 1984 election.

The following chart compares costs for the 1993 and 1194 elections, and outlines the cost of providing ballots in non-English languages for Los Angeles County, as prepared by the Los Angeles County Registrar of Voters.

<sup>10</sup> 42 U.S.C. § 1973aa-1a.

<sup>11</sup> H.R. Rep. 97-227, at 26.

<sup>12</sup> United States General Accounting Office, Briefing Report to the Honorable Quentin N. Burdick, United States Senate. "Bilingual Voting Assistance: Costs of and Use of During the November 1984 General Election," 1984.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.*

**Multi-Language Cost Summary For the  
1993 Statewide, 1994 Primary and General Elections**

	Nov. 1993	June 1994	Nov. 1994	TOTALS
Chinese	\$ 152,866.03	102,437.85	85,053.88	\$ 340,357.76
Japanese	47,244.97	45,340.13	66,630.46	159,215.56
Spanish	124,957.02	12,116.54	58,523.80	195,215.56
Tagalog	47,385.05	76,158.58	67,568.87	195,597.36
Vietnamese	79,337.24	55,999.82	67,700.18	203,037.24
Printing Cost	\$ 451,790.31	\$ 292,052.92	354,477.19	\$ 1,089,320.42
Mailing Cost	Not available	45,234.40	66,246.76	\$ 111,481.16
<b>TOTAL COST</b>	<b>\$ 451,790.31*</b>	<b>\$ 337,287.32</b>	<b>\$ 411,723.95</b>	<b>\$ 1,200,801.58*</b>

\*Mailing Cost not available for November 1993 Statewide election  
Source: County of Los Angeles Registrar-Recorder/County Clerk

As shown, even in a highly diverse population such as Los Angeles county, election costs are less than 2% of the state's overall election costs. Instead, as improved targeting and scales of economy amortize costs of assistance over the years, compliance with language assistance provisions is a particularly small price to pay for access to a fundamental Constitutional right.

**LANGUAGE ASSISTANCE IN VOTING IS EFFECTIVE**

Some voting rights detractors argue that bilingual election material is seldom used by voters. To the contrary, evidence shows quite the opposite. Although impediments to voting are still faced by language minorities in the United States, voter registration and participation rates continue to rise, and the number of elected officials of language minority backgrounds continues to grow. By removing barriers to voting, language minority citizens are integrating into the electoral process in numbers greater than ever.

For example, the Latino community has had a steady increase in voter registration and turnout since 1976. The Southwest states of Arizona, California, Colorado, New Mexico and Texas *doubled* its registered Latino voters between 1976 to 1988. During the period from 1980 to 1990, Latino voter participation increased *five times* the rate of the rest of the nation.<sup>15</sup> According to the National Association of Latino Elected Officials (NALEO), the number of Latino elected officials more than doubled during the years 1973 to 1984, and continues to rise significantly.

More specifically, data compiled by the Southwest Voter Research Institute through exit polling of primarily Latino voters in the Southwest indicate significant use of bilingual election material. In the 1984 and 1990 exit polls, 25 percent of Latinos who voted in Texas used bilingual election material.<sup>16</sup>

Demographic trends and immigration patterns indicate that communities will likely need language assistance in voting during the life of the Act's reauthorization.<sup>17</sup> But it is the successful use and implementation that underscores the need for language assistance to provide increased voting and thus, increased integration into American society.

<sup>15</sup> H.R. Rep. No. \*\*102d Congress 2d Sess.

<sup>16</sup> See, *Southwest Voter Research Institute Research Notes*, Poll Dates, 1984, 1990.

<sup>17</sup> See, e.g., Statement of Charles Pei Wang, Vice Chair, U.S. Commission on Civil Rights, before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992); Economics and Statistics Administration, Bureau of the Census, U.S. Dept. of Commerce, 1990 *Census Profile: Race and Hispanic Origin* (June 1991)

## TARGETED LANGUAGE ASSISTANCE BENEFITS EVERYONE

In apparent attempt to fuel political controversy rather than rely on facts, many opponents of language assistance provisions argue that non-English voting materials foster divisiveness, and somehow detract from both learning English and assimilating into society. These myths have been advanced at various times and in various forms throughout the debate on the value of exclusive English usage in our heterogeneous society. Fortunately, as Congress has consistently recognized the value of language assistance to overcome voting impediments, many citizens have themselves debunked the illogical myths of divisiveness and isolationism.

Data shows that the rate of English acquisition has accelerated, particularly amongst Latinos. Language minorities are learning English at a rate equal to or faster than earlier immigrants.<sup>18</sup> The incidence of use for bilingual voting materials is predominantly among older, less educated, and less affluent citizens of the community. Because of the language requirement waiver for older citizens,<sup>19</sup> many seniors are able to obtain their lifelong dream of American citizenship even in their later years. With the help of both written and oral assistance, they are able to make informed decisions and feel less intimidated, to fully participate in American society as productive and participating citizens.

An example of this fulfillment is Maria Guadalupe Belmares, of San Antonio, Texas. Mrs. Belmares, now 68 years old, has been in this country since 1971. As she patiently waited for citizenship, she dreamed of being a contributing member of her community. As Mrs. Belmares said, "I have waited for this opportunity for a long time. Although I speak English, I can make a better decision for myself and for my family by reading election material in Spanish." Mrs. Belmares, and others like her readily acknowledge taking away her language assistance would have a devastating effect on her ability to participate.

Rather than include Mrs. Belmares in American culture and society, her new country may send the message of exclusion by denying citizens the right to an informed and effective vote. Language assistance helps *include* participants, whether they are new immigrants or Native Americans. It is the values shared in participating in the electoral process and in recognizing the importance of voting in our representative democracy that are the core ideals we all share as Americans. To focus on mere language ability is to deny those fundamental values that both immigrant and native treasure in our society, and trivializes the deep respect and importance that voting holds for Mrs. Belmares and us all.

## CONCLUSION

As Congress again considers the language assistance provisions of the Voting Rights Act, through reauthorization or repeal, we should not lose sight of the issues of the day. It is an unfortunate fact of legislation that public policy often gives way to political sensitivities. Issues tend to become confused, or blur into one another, so that economic considerations outweigh longstanding Constitutional protections.

History has shown us, and we continue to see, discrimination has prevented U.S. citizens from exercising their right to vote. Congress has recognized, as recently as 1992, the continued need to protect effective participation through language assistance provisions. I respectfully urge Congress to continue protecting democratic principles fundamental to all Citizens.

Mr. GOODLATTE. Thank you, Ms. Hernandez.

We have been joined now by Ms. Fairey. Welcome. You were introduced in your absence. Your full statement will be made a part of the record. We'd ask you to summarize your remarks in 5 minutes.

<sup>18</sup> K. McCarthy & R. Burchiaga Valdez, *Current and Future Effects of Mexican Immigration in California* (1986); C. Veltman, *The Future of Spanish Language in the United States*, 1988; A. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 Harv. C.R.-C.L. L. Rev. 293, 314 (1989).

<sup>19</sup> See generally, 8 U.S.C. 1423 §§312(1)(B), (2), waiving naturalization language requirements for particular physical or developmental disability or mental impairment, or for certain persons over age 55 who have lived in the United States for over 15 years.

**STATEMENT OF FRANCES FAIREY, YUBA COUNTY CLERK,  
RECORDER, AND REGISTRAR OF VOTERS, MARYSVILLE, CA**

Ms. FAIREY. So you have entered this into the record. Basically, I guess you want me to go into my background, some of my biography? Is that appropriate?

Mr. GOODLATTE. That would certainly be appropriate, and what remarks you want to share verbally with the committee regarding your experience as clerk.

Ms. FAIREY. Well, being a native Californian and having raised four children, two daughters and two sons in an area, a rural area just north of Sacramento, I have resided there all my life. Two of my children still reside there. But my background is basically in business administration. I also have a bachelors degree in nursing, which is kind of maybe out of the realm of being a county clerk in Yuba County, but it still deals with caring about people. I received that degree at the California State University at Chico, with a certificate in public health nursing.

So I am well versed in being exposed to the Hispanic group. We farmed. We have sponsored Hispanic families from Mexico for the purposes of working on the ranch.

I first became interested in public life in 1970. At that time I ran for office of county clerk. My successful opponent who was a supervisor at that time, was appointed and won that election. But anyway, at that point in time I decided public office was not for me, so I continued my career in nursing. When the position became open in 1980 due to the vacancy, the prior clerk had a heart attack and had to retire, I was appointed out of a field of eight people by the boards of supervisor. I have been elected three times, ran once unopposed for that position.

As a taxpayer, I still have an interest in my family farm. My son-in-law runs that farm. So like I say, have concerns about how the tax dollar is spent. You know, my office reflects, you know, my conservative approach. We have actually only two people in my elections department in the county of Yuba. Of course at election time we have to hire part-time help that comes into help prepare for election. But the conservative approach I have had in handling my office and managing my department these past 16 years have given my constituents a concern about what they want to represent them. Consequently, I have been reelected and reelected. It pleases me dearly. I work very hard to work with my constituents in the population in Yuba County.

In preparing this statement for presentation before this subcommittee hearing, I had to go back and review a lot of material, because when I came into office, I had not been aware that there was a thing like the Voting Rights Act of 1965. To this day, I'm not quite sure what triggered the inclusion of Yuba County under the Federal Voting Rights Act of that time. I don't know whether it was Beale Air Force Base. That's a large population that's in Yuba County that tends not to vote. They have 6,000 to 7,000 people on that base. This past election, we had roughly 800, a little more than 800 that were registered to vote from that base, but little over 100 actually voted.

So we talk about our minority groups. The Mexican-Americans are well integrated into our county. So we're not talking about

pockets or areas of such in Yuba County. They are well integrated and not defined in any particular pocket.

Both my parents were immigrants who became citizens. Their English was self taught. My eldest brother was sent home from the first grade because all he could speak was German. My parents were told to teach him English, which they did. The next year he entered school. So I understand the problems of a foreign language and the kind of problems that can arise from personal experience. But it was quickly solved by my parents. Unfortunately, they quit speaking German, and I believe that was a loss to the children, because I have always felt that a second language is important. But certainly not the involvement or due to the support of Government.

They impressed upon me the importance of voting. I never missed an election for any reason in all my years. My strong feelings for the need for anyone who is eligible to vote in the voting process provided me with a determination to carry out my duties as registrar.

Our recent March consolidated Presidential primary election was a disappointment for Yuba County. I don't know how anyone else wants to address that, but the percentage turnout rate was lower than anticipated. This of course, not unusual for the primary because some would say, oh this is the primary, we can vote in November where it really matters.

Mr. GOODLATTE. Ms. Fairey, let me interrupt for a minute. Your 5 minutes have expired. Without objection, we'll give you 2 additional minutes to summarize your testimony.

Ms. FAIREY. OK, fine. So I'll jump through a lot of this. We want to talk about citizens of minorities. What I basically want to touch on today is the fact that we have worked with the bilingual ballot. We have had only one request for a bilingual material. At that point in time, it was offered at the counter to a person in making inquiries who was an Anglo, not a Hispanic. Primarily these requests come from teachers wanting to use it as a demonstration in the classroom.

We have wasted a lot of money. Not wasted, but we've attempted to and we've complied with the regulations, but it has been difficult because I feel that it's not effective. We are not getting the people coming forth requesting the Spanish ballot. You know, the people that come into our office that are Hispanic say they came here to America to be assimilated into this country and have no difficulty with this. We do have translators available in the community if someone does have a question. But you have got the material here as to cost savings that we could have in Yuba County, could provide us with an extra person in our department.

As I hurriedly go through this, I just want to stress that for Yuba County, I can't say for anyone else, but I know that it has been a waste of good hard earned tax dollars. I'd like to see some revisions made. If you on your committee have any other questions, at this point in time I'd be glad to respond to those.

[The prepared statement of Ms. Fairey follows:]

PREPARED STATEMENT OF FRANCES FAIREY, YUBA COUNTY CLERK, RECORDER, AND REGISTRAR OF VOTERS, MARYSVILLE, CA

I am a California native and reside today only a few miles from my birthplace, a farm house in which my broker still lives. I am a widow and have raised two

daughters and two sons. They are all college graduates and their professions are in the medical field.

My background covers Business Administration and Nursing. I have a Bachelor of Science Degree in Nursing from California State University at Chico, with a Certificate in Public Health Nursing.

I first became interested in public office in 1970. I ran for the office of County Clerk. My success fill opponent was a County Supervisor, and I swore at that time I would never run for public office again. That position opened up for appointment in 1980, and in a field of eight applicants, I was chosen. I have been re-elected three times and have run once unopposed.

As a taxpayer (I still run a family peach and prune orchard) I have always been concerned how my tax dollar is being spent. My office reflects my conservative approach, and I have the support of constituents who have chosen to re-elect me time and time again.

In preparing this statement for presentation before this sub-committee hearing, I reviewed a tremendous amount of material since I did not become the Registrar of Voters until 1980. I was not familiar with the Voting Rights Act of 1965 until that time.

It never has been clear to me what triggered the inclusion of Yuba County under the Voting Rights Act of 1965: Was it because of Beale Air Force Base? Our language minority groups? Mexican-Americans are well integrated in the county, not in any identifiable pockets.

Both my parents were immigrants who became citizens. Their English was self-taught. My oldest brother was sent home from the first grade because all he could speak was German. My parents were told to teach him English, which they did, and then the next year he entered school. Thus, I do understand the problems a foreign language can present from personal experience, but it was solved quickly by my parents. Unfortunately, they quit speaking any German and I believe that was a loss to the children, as a second language can be an asset, however, for a family to maintain a foreign language should not be the business of the government.

They impressed upon me the importance of voting. I have never missed an election for any reason in all my years. My strong feeling for the need for everyone who is eligible to participate in the voting process provided me with the determination to carry out my duties as Registrar.

Our recent March Consolidation Presidential Primary election was a disappointment. The percentage turnout rate was lower than anticipated. This is, of course, not unusual for a Primary, so say some. The response is, "Oh, we'll vote in the November General Election where it really counts."

Let's talk about participation. The Voting Rights Acts was amended in June of 1975. Under section 203(a) it states that Congress found that, though the use of various practices and procedures, citizens of "language minorities" had been effectively excluded from participation in the electoral process. It continues to state that such minority group citizens are ordinarily directly affected by the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. So Congress had set out to correct this problem by laws that require voting notices, forms, instructions, assistance and ballots in other than the English language.

I find no fault with the feeling of compassion, but I have been Registrar for sixteen years and only once have my office staff handed Spanish literature to anyone. Let me restate that again; in my sixteen years as Registrar I have received only this one request. This was offered to, not requested by, the individual. The only other request came from teachers who use this material in their classes.

The cost to Yuba County for required procedure has not been effective. I received many angry phone calls and also people who come into the office asking why do we still have Spanish booklets and materials. These questions also come from Hispanics as well.

To the best of my knowledge, Yuba County is one of three counties in California that is covered under Section 4-F-4. The significance under 4-F-4 places a substantial burden on Yuba County as far as pre-clearance is concerned under section 5 of the Voting Rights Act. Change of location of precinct sites and precinct boundary changes are two of the main causes for requesting pre-clearance. It is time consuming and many times delays firming up plans for an up-coming election.

I will go into the enormous cost to our small rural county, but for the provisions of the Voting Rights Act regarding language minority groups, Yuba County would have saved the following amount:



DATE	REASON	COSTS	SAVINGS
March 26, 1996	1/3 reduction of pages in booklets	\$8, 934.00	Would be savings
	Spanish Translations	\$8,477.00	\$17,411.00
October General Election 1994	1/3 reduction of pages in booklets	\$5,768.00	Would be Savings
	Spanish Translations	\$11,460.00	\$17,228.00
May Primary Election 1994	1/3 reduction of pages in booklet	\$5,504.00	Would be Savings
	Spanish Translation	\$6,061.00	\$11,565.00

These figures are for just a few elections. If we could go back to 1975 there would be a tremendous amount expended.

As the above table shows, our county has spent substantial resources on an unfounded mandate that has been used only once in my sixteen years as Registrar. I don't know about other counties, but I unequivocally state that bilingual ballots are not only a wasted resource, but also a waste of resources.

The usual routine after an election and the canvas that follows, involves clean-up. This process means dispensing of an enormous amount of Spanish material. It usually is untouched after arrival in our office and then later carted out to the dumpster. A total waste, that involved printing, translation, freight and taxes that are paid for this unnecessary material.

In our county, these monies could have provided an extra staff member and more data processing equipment or even a lower tax burden for Yuba County residents, who do not use or receive any benefit from federally mandated bilingual ballots to maintain the standard that is required, and I am very proud of my Election Department.

Under Section 51.11 (Scope of Requirement) the Voter Rights Act states any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, even though it is designed to remove the elements that caused objections by the Attorney General to a prior submitted change, must meet the Section 5 pre-clearance requirement. We are effected mostly by Section (d) which relates to change in boundaries of voting precincts or in the location of the polling places.

A recent case in point this past election, I requested a precinct location change and a request to change and a request to change a precinct to mail ballot status. This of course, has gone on all these years and it is very burdensome, costly and ineffective.

Looking at the voters in my county, I see apathy amongst them; black, white, Hispanics, etc. . . . It is frightening to see a great number of people not registered (white, black & Hispanics) and of those that are, only a small percentage do vote. This means that a very small number of our population make the decisions you and I must live by.

There are no excuses for not reading and understanding the English language in this day and age. Have we not provided our children with every opportunity with our free schooling, free lunch, free transportation, etc.? WE have failed miserably, and you on this committee have a great responsibility to make the changes that will get our country headed back down the right path, to that end; passing H.R. 351 would help put us on this right path.

Let us not forget that with all we have failed to do we still are the greatest nation in the world, but we cannot continue to spoon feed our society. Each and every one of us must do our part for us to continue as a great country.

Mr. GOODLATTE. Thank you, Ms. Fairey. We'll come back to questions. First we're going to hear from Ms. Chavez. You have testified before this committee before. We're glad to have you back. If you would please summarize your testimony in 5 minutes.

#### **STATEMENT OF LINDA CHAVEZ, PRESIDENT, CENTER FOR EQUAL OPPORTUNITY**

Ms. CHAVEZ. Good to be with you, Mr. Chairman and members. I am sorry that Mr. Frank had to leave. I'm sure he had another meeting to go to. But because he's not here, he is going to not be able to witness a historic occasion. I want to state for the record that there is very little that Mr. Frank said this morning that I did not in fact whole heartedly agree with. That may surprise some of the members on the other side of the aisle as well.

Because in fact, when we talk about bilingual ballots, in a certain sense we are making much ado over nothing. I think the problem does not stem from the majority's interest in this issue. It stems from the way in which bilingual ballots came about and were included in the original Voting Rights Act in 1975. I know a good deal about that, because I was a member of the professional staff of this subcommittee from 1972 to late 1974, and in fact took part

in discussions about whether or not bilingual ballots should be added or what measures could be taken to include Hispanics under the section 5 provisions of the Voting Rights Act.

That in essence is what this whole debate is about. It is not about bilingualism. It is not about whether or not there is a sizeable portion of the U.S. population who are U.S. citizens and who do not speak English and were it not for a bilingual ballot, could not exercise their franchise. In fact, I can state categorically, there is no body of evidence that shows that there is such a sizable population eligible to vote who do not speak English. In fact, there was not information about that subject in 1975 when this provision was originally added to the Voting Rights Act.

Mr. Frank was also absolutely correct that in 1965, there was overwhelming evidence of systematic and pervasive and indeed, vicious and often violent discrimination against blacks particularly in the Deep South. It was because of a history of nearly 100 years after the end of slavery and after the 15th amendment of blacks being systematically denied the right to vote, that a provision was added to the Voting Rights Act, which allowed the Justice Department essentially to preclear any changes. Because what would happen was every time we had a civil rights measure pass and it looked like blacks were going to have access to the polling booth in the South, in those jurisdictions that were discriminating, they would come up with new provisions, change laws, change polling places, change other matters related to voting that were meant to systematically deny blacks the right to vote.

Now because of the way in which the act was originally drafted using the literacy test as the trigger for section 5 clearance, it targeted those States in which there was low registration, low voter turnout, and a literacy test as of 1965. Hispanics, looking at the enormous progress that was made between 1965 and 1975, largely because of the way the Justice Department got involved in preclearing voting changes and got involved in redistricting decisions, decided that they too wanted coverage under this special section 5 provision. The problem was there was no similar history of discrimination against Mexican-Americans at the polling place in any way comparable to what had gone on with blacks in 1965. I will simply refer you to that part of my testimony when I talk about those jurisdictions that came covered under the 1975 provisions.

In 1965, there were 100 elected officials who were black throughout all levels of office in the Deep South. In 1975, when Hispanic organizations, including MALDEF and Vilma Martinez, Ms. Hernandez' predecessor testified before this subcommittee, they claimed that there was in fact a denial of the right to vote. But at that very time in the U.S. Congress, there were five Members of Congress who were Hispanic. There was one U.S. Senator who was Hispanic from a covered jurisdiction. There were two U.S. Governors who represented States that then became covered under these language minority provisions.

So the fact is the language minority provisions were added simply as a way to try to come up with a trigger that was similar to a literacy test. They used a court decision that was handed down in a case in New York that declared that an English language bal-

lot was in fact comparable to a literacy test. That was how we ended up with bilingual ballots.

As I say, there was very little evidence of the need for bilingual ballots presented either in the House or in the Senate. You can go back and check your own hearing records if you doubt my word. Most of the information that was provided did not have to do with citizens or those eligible to vote, but was simply information provided on the number of Spanish speakers, many of whom were not U.S. citizens, and also the low voter turnout in the Hispanic population. Again, the result of noncitizens.

Today in fact—

Mr. GOODLATTE. Your time has expired. Without objection, you will be given 2 additional minutes to summarize your testimony.

Ms. CHAVEZ. Today in fact, the situation with respect to the proportion of the Hispanic population that is noncitizen and therefore, ineligible to vote and having no need for a bilingual ballot, is even more overwhelming than it was in 1975, because there is a much larger proportion of the Hispanic population today that is foreign born.

In summary, I might say that I think bilingual ballots are by and large an unnecessary and costly provision. That there are other ways of providing assistance to that very small number of persons who are U.S. citizens, who have the right to vote, and yet who do not speak English well. We can provide them the ability to take someone in with them into the polling place. We can provide them with absentee ballots so that they can seek assistance from friends, relatives and others. Or we can allow them to take materials that are provided by outside groups. In fact, Ms. Hernandez' own organization could provide a good public service by providing that kind of information to new citizens or elderly Hispanics who do not yet read English well enough.

Finally, I might just point out two additional things. The question of bilingual ballots has raised questions of fraud. There was an important case in 1982 in San Francisco in the northern part of the State where bilingual ballots were shown to have been used by persons who were in fact ineligible to vote. There was an investigation ordered by the U.S. attorney in that case. That investigation was halted by a suit brought by the ACLU, which claimed that any investigation of the question of whether or not noncitizens were voting through bilingual ballots would discourage new citizens from voting. So the Justice Department stopped its investigation.

There are also problems in terms of translations. There have been some important cases in New York noted in the New York Times in 1994, of mistranslations in fact, on one Chinese ballot. The word "no" appeared where the word "yes" should appear, and in fact the mistranslation obviously led to people voting incorrectly in that particular election. Thank you very much.

[The prepared statement of Ms. Chavez follows:]

PREPARED STATEMENT OF LINDA CHAVEZ, PRESIDENT, CENTER FOR EQUAL OPPORTUNITY

Mr. Chairman, I am Linda Chavez, president of the Center for Equal Opportunity, a non-profit research and education project specializing in issues related to race, ethnicity, and assimilation. I am pleased to be here this morning to testify on

the use of bilingual ballots, an issue with profound implications for our understanding of citizenship. As you know, I was staff director of the U.S. Commission on Civil Rights during the Reagan Administration. I have also taught in affirmative action programs at the University of Colorado and UCLA from 1969-1972, and was a member of the professional staff of the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee from 1972-1974. I have written extensively on civil rights, voting rights, and immigration issues in professional journals and the popular press and am the author of a book on Hispanics in the United States, *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (Basic Books, 1991).

The Voting Rights Act of 1965 was originally intended to put a stop to certain grave civil rights abuses. For almost a hundred years, many southern states systematically denied black citizens the right to vote, despite constitutional and statutory guarantees of that right. The act was enormously effective in opening the doors of political participation in the South to citizens who had been unfairly shut out of the political community. Within two years, black voter registration in Mississippi, for example, shot up from 6 percent to 60 percent.<sup>1</sup> The number of black elected officials in the South went from only 100 in 1965 to nearly 5,000 by 1989.<sup>2</sup> The act banished southern political segregation to the history books.

The success of the Voting Rights Act was partially due to the fact that, unlike previous civil rights laws, it targeted problem districts for special enforcement. Certain jurisdictions were required to submit changes in voting procedure, no matter how trivial (even the moving of a polling site across the street), to the U.S. Justice Department or the District Court of the District of Columbia for approval. The trigger for this special coverage (section 5) was the literacy test; any state or political subdivision in which literacy tests were used to determine voter eligibility and in which less than 50 percent of the voting-age population had voted in the previous presidential election was subject to section 5 coverage. The literacy test was used for a reason. Although literacy tests themselves were still considered a legitimate method to determine fitness to vote in 1965 so long as they were applied impartially, literacy tests had specifically been used in the South to deny blacks the right to vote. As Abigail Thernstrom describes it in her book *Whose Votes Count? Affirmative Action and the Voting Rights Act*:

In the 1960s southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily*, and the definition of terms such as *habeas corpus*. By contrast, even illiterate whites were being registered.<sup>3</sup>

The Voting Rights Act abolished these unfair practices.

Hispanic activists, like the Mexican American Legal Defense and Education Fund (MALDEF), saw the effects of the act on black political participation and started looking for a way to convince legislators to expand the act's jurisdiction to include places where Hispanics lived. By the mid-1970s, the preclearance requirements of the act had become a powerful tool in the hands of civil rights organizations for influencing redistricting decisions. MALDEF and other Hispanic activist groups wanted to extend the influence of that tool into Hispanic districts. They faced two problems: first, the act was written to be triggered only in the Deep South. Many states with large Hispanic populations, like Texas, did not use literacy tests to qualify citizens to vote, and others, like New York, used literacy tests but had never been accused of discrimination. Second, Hispanics had never faced the kind of systematic denial of the right to vote that blacks had faced, and it was not clear that Hispanic activists could convince Congress that Hispanics were in need of the kind of drastic remedy that had been extended to blacks in the South. No blacks had been elected to Congress from the Deep South since Reconstruction when Congress enacted the 1965 Voting Rights Act and its special provisions; but in 1975 Hispanics held local, state, and federal offices in the jurisdictions MALDEF argued were systematically denying Hispanics' voting rights. At the time, both New Mexico and Arizona had Mexican American governors; one U.S. Senator was a Mexican American, as were four members of the U.S. House of Representatives. One additional House seat was held by a Puerto Rican. Although there was some intimidation of Hispanics in certain areas, the situation was a far cry from systematic abuse blacks had faced in the Deep South prior to 1965.<sup>4</sup>

Nonetheless, MALDEF found a possible solution to the problem of covering Hispanics under the special provisions of the act. The foundation of their strategy was laid in the original act, when Puerto Rican citizens living in New York sought the right to satisfy literacy requirements in Spanish instead of English. Congress added a provision in the act declaring that Puerto Ricans who had been educated in Spanish-language schools in Puerto Rico should be allowed to take Spanish literacy tests

instead of English ones. This was seen at the time as a reasonable measure; Puerto Ricans are by law U.S. citizens, and the provision merely sought to ensure that they would not lose their right to vote in states that required literacy as a voter qualification. But it turned out to be the thin end of a huge bilingual wedge.

MALDEF hit upon an idea: states like Texas and New York may not have been using literacy tests to deliberately exclude Hispanics from voting, but they did print their ballots and election materials in English. Using the same logic that supported the provision for Spanish-speaking Puerto Ricans, they argued that English-language ballots were *de facto* literacy tests, excluding otherwise-qualified citizens from exercising their right to vote. Puerto Ricans in New York had already successfully sued the state for discrimination, saying that it was discriminatory to print ballots in English in a city with a large Hispanic population.<sup>5</sup> MALDEF used the language issue as a hook to expand jurisdiction of the Voting Rights Act to include Hispanic districts. In 1975, after a campaign by MALDEF and other groups, the act was amended to include over 375 districts outside the South and to guarantee the right of Hispanics to cast ballots printed in Spanish.

Under the new version of the act, a district was placed under the act's jurisdiction if so-called "language minorities" made up five percent of the district and voter turnout was less than 50 percent of the voting-age population. Such districts would be subject to the act's broad-based preclearance provisions, which had previously been used only to prevent southern districts from enacting new racial voting barriers, and would be required to make bilingual ballots available to certain named "language minorities": Spanish speakers, Asians, American Indians and Alaskan natives.

These amendments to the Voting Rights Act passed overwhelmingly in both houses of Congress, despite the almost total failure of MALDEF and the other Hispanic activist groups to establish that Hispanics faced discrimination even remotely comparable to that faced by blacks in the South before 1965. Both the Justice Department and the U.S. Commission on Civil Rights questioned whether Hispanics needed the drastic preclearance provisions of the Voting Rights Act. The assistant attorney general for civil rights, J. Stanley Pottinger, Jr., testified, "the Department of Justice has concluded that the evidence does not require expansion [of the act's jurisdiction] based on the record currently before us. In other words, that record is not compelling."<sup>6</sup> The Civil Rights Commission noted that statistics on Hispanic voting "do not paint the shocking picture that, for example, 1965 statistics on Mississippi did."<sup>7</sup> But the House and Senate Judiciary Committees accepted the testimony of MALDEF and other witnesses that Hispanics needed federal protection, and the logic that English-language ballots were comparable to the racially abused literacy tests of the Deep South.

And no one seemed to care that factors other than language impediment were far more significant in explaining low voting rates among some Hispanic groups. When Senator Barry Goldwater testified that according to the Census Bureau "40 percent of all Spanish origin persons who were not registered in 1974 reported that they were not citizens,"<sup>8</sup> he was politely ignored. It was as if there could be no relationship between citizenship rates and voting rates among Hispanic groups. But that factor is critical, because the act measures voter turnout as a percentage of the voting-age population, not as a percentage of the voting-age citizen population. It assumes that if voter turnout is low compared to the adult population, it must be because of barriers to voting. In neighborhoods where a large portion of the adult population is non-citizen, and therefore not eligible to vote, this assumption is patently false.

We have now had bilingual ballots for twenty years, and it's time to reassess the need for them. Bilingual ballots are unnecessary, and they are a costly burden.

The Voting Rights Act assumes that low turnout is caused by barriers to voting, so let's look a couple of districts with low voter turnout. California's 33rd District, which is 79 percent Hispanic, has a voting-age population of 384,472 persons.<sup>9</sup> But in 1994 it only had 96,404 registered voters, about a quarter of the voting-age population. The incumbent, Rep. Lucille Roybal-Allard, won the 1994 election with 33,814 votes to her opponent's 7,694, for a total of 41,508 votes between the two major parties—a mere 11 percent of the voting-age population.<sup>10</sup> New York's 12th District, which is 54 percent Hispanic, has a voting-age population of 416,223 persons.<sup>11</sup> But in 1994 only 182,964 voters were registered there. The incumbent, Rep. Nydia Velázquez, won with 37,322 votes; her three opponents gathered 5,943 votes for a total of 43,265 votes—only about 10 percent of the population.<sup>12</sup>

Why the dismal turnout in these heavily Hispanic districts? Not because of impediments to voting; the California 33rd District and New York 12th District are definitely subject to the Voting Rights Act. After twenty years of bilingual ballots, these and other Hispanic districts continue to produce remarkably low voter turnout, suggesting that the Civil Rights Commission and the Department of Justice



were right back in 1975; what is more language has little if any relationship to low voter turnout among Hispanics.

The low turnout is better explained by non-citizen populations. Since the bilingual ballot requirements were first enacted in 1975, the number of non-citizen Hispanics living in the U.S., legal and illegal, has increased dramatically. According to the 1990 Census, approximately half of U.S. Hispanics over 20 are foreign-born.<sup>13</sup> While the U.S. adult Hispanic population grew by nearly four million people from 1990 to 1994, the number of adult Hispanic citizens grew by just over one million people. This increase in noncitizen Hispanics has been concentrated in particular states. In California and Florida, the majority of adult Hispanics were non-citizens in 1994. In New York, 42 percent of adult Hispanics were non-citizens, and in Texas 33 percent of adult Hispanics were noncitizens.<sup>14</sup> Because non-citizens are highly concentrated, their effect on bilingual ballot enforcement is especially visible in a few heavily Hispanic districts.

Other factors also explain low voter turnout among Hispanics. "Regardless of race or ethnicity, younger people, people with lower income levels and people with lower levels of educational attainment tend to vote at a lower rate than older people, and people with high income or educational attainment levels," explains *The Latino Vote at Mid-Decade*, a report by the Tom as River a Center. "Overall, the Latino population of the United States is younger, has lower income levels and lower levels of educational attainment than the non-Latino population. The confluence of these three factors contribute to the lower level of Latino citizen participation compared to the non-Latino population."<sup>15</sup> In other words, Hispanics aren't staying home because they're not able to vote. They're either not eligible to vote, or they don't choose to—and bilingual ballots have had negligible effect on Hispanic voting participation.

It should really come as no surprise that bilingual ballots have had no effect on Hispanic voter turnout, because in fact they should almost never be necessary. In order to vote, one must be a citizen, and in order to become a citizen one must be proficient in English. (There is an exception to this policy for older immigrants who have lived in the U.S. for over 20 years, but they are a very small fraction of those seeking to become citizens.) We require immigrants to learn English before they naturalize because English is the common language of our nation, and a person who can't understand English will not be able to participate in the political community in any but the most marginal capacity. The overwhelming majority of American political discourse is inaccessible to a person who does not speak English. That's why we test immigrants on their knowledge of English before we grant them citizenship. Given all that, why should we be surprised that the availability of foreign-language ballots has had no impact on voter turnout? If you can't read an English-language ballot, how can you pass the citizenship test in the first place?

Bilingual ballots are an expensive burden on state and local governments. New York is probably hardest hit: the cost of bilingual balloting in New York City will be about \$700,000 in fiscal year 1996. It has had to produce new voting machines because its old machines could not accommodate the required Chinese characters. California also spends a lot on bilingual ballots. The California Secretary of State reports that the state government spends \$100,000 on bilingual voting material. Los Angeles County has to produce sample ballots in English, Chinese, Tagalog, Japanese, Vietnamese, and Spanish. It spends about \$350,000 producing such materials. Alameda County reported an estimate of \$200,000 in bilingual ballot spending for fiscal year 1996, even though demand for bilingual services is about one-tenth of the non-English proficient persons living in the county.<sup>16</sup>

Sometimes, the bilingual ballot requirements are downright silly. Inyo County, California, has been targeted as needing bilingual voting services, but has never had any requests for such services. It was targeted because it contains an Indian reservation with 24 people, two of whom speak Spanish as their primary language. It is not known whether they are registered to vote, but the county is ready to provide them with bilingual ballots, just in case they are ever requested. In Arizona, Maricopa County provides Native Americans with an 800 number and translators. The local Navajo tribe has thirty-five voters, all of whom speak (and vote) in English. The 800 number has been accessed three times, twice by the translators themselves.<sup>17</sup>

There are alternatives to the bilingual ballot regime. Before the federal government started mandating bilingual ballots, many jurisdictions provided citizens who had trouble with English with other alternatives. Some jurisdictions allowed voters to bring a friend or relative into the voting booth to assist them, just as blind voters were allowed to do. Absentee ballots can also be taken home and filled out with similar assistance. In addition, Hispanic and other civic groups could provide bilingual sample ballots and other materials to assist new citizens. Ethnic organizations

have a long history of providing such benefits to their communities without help from the government.

Current bilingual ballot provisions are both unnecessary and politically motivated, calculated to increase the influence of Hispanic activist groups over redistricting decisions. The result is often ethnically-gerrymandered super-majority Hispanic districts filled with non-citizens. In more than twenty years, bilingual ballots in federal elections have done little if anything to improve the political participation of Hispanics, but they have made it possible for a handful of Hispanic elected officials to win safe seats. Thank you.

#### END NOTES

<sup>1</sup> Abigail Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Cambridge: Harvard University Press, 1987), 2.

<sup>2</sup> Joint Center for Political Studies, *Black Elected Officials: A National Roster* (Washington, D.C.: Joint Center for Political Studies, 1989).

<sup>3</sup> Thernstrom, *Whose Votes Count?*, 15.

<sup>4</sup> See Chavez *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (New York: Basic Books, 1992), 46-48.

<sup>5</sup> *Torres v. Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1984).

<sup>6</sup> Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Extension of the Voting Rights Act of 1965: Hearings*, 94th Congress, 1st session (Washington, D.C.: G.P.O., 1975), 544.

<sup>7</sup> Staff memorandum entitled "Expansion of the Coverage of the Voting Rights Act," June 5, 1975, as cited in Thernstrom, *Whose Votes Count?*, 55.

<sup>8</sup> Senate, *Extension of the Voting Rights Act of 1965: Hearings*, 720.

<sup>9</sup> Michael Barone and Grant Ujifusa, *The Almanac of American Politics 1994* (New York: Macmillan Publishing, 1994), 168-170.

<sup>10</sup> California Secretary of State, Elections Division, via telephone, April 1996.

<sup>11</sup> Barone and Ujifusa, *The Almanac of American Politics 1994*, 892-894.

<sup>12</sup> New York State Board of Elections, via telephone, April 1996.

<sup>13</sup> U.S. Census, 1990 Census of the Population, Persons of Hispanic Origin, 1990 CP-3-3, via telephone from the U.S. Census Bureau, April 1996.

<sup>14</sup> The Tomas River Center, *The Latino Vote at Mid-Decade* (Claremont, California: The Tomas River Center, 1996), 2 and 4.

<sup>15</sup> The Tomas River Center, *The Latino Vote at Mid-Decade*, 13.

<sup>16</sup> English First, *Bilingual Ballots: State Costs and Analysis* (a four-page summary of bilingual voting expenses nationwide).

<sup>17</sup> English First, *Bilingual Ballots: State Costs and Analysis*.

Mr. GOODLATTE. Thank you, Ms. Chavez. I take it from your testimony and your written statement that you view the bilingual ballot requirements of the Voting Rights Act as not really empowering Hispanics but as empowering a few Hispanics. In fact I'll quote your final paragraph. You say, "Current bilingual ballot provisions are both unnecessary and politically motivated, calculated to increase the influence of Hispanic activist groups over redistricting decisions. The result of often ethnically gerrymandered supermajority Hispanic districts filled with noncitizens. In more than 20 years, bilingual ballots in Federal elections have done little, if anything, to improve the political participation of Hispanics, but they have made it possible for a handful of Hispanic elected officials to win safe seats."

Could you comment on how you think that works contrary to the interests of Hispanics in the country?

Ms. CHAVEZ. Well, for example, because of these jurisdictions do come under the section 5 preclearance provision, when redistricting decisions are to be made, they must submit those to the Justice Department for preclearance. What has happened over the last 15, almost 20 years now, has been that the Justice Department has routinely interjected itself into the redistricting process. It has used this bilingual provision as its entre into those districts where there are large numbers of Hispanic voters, in particular.

There have been a number of very high profile cases in California. I write about some at the city council and county supervisor level in my book. I mention in my testimony cases involving two

Members of Congress, Nydia Velázquez and Lucille Roybal-Allard also, where you have districts which have been created, super-majority districts under the voting division's own guidelines, in which essentially the districts are packed with an ethnically homogenous population. But in this instance, they tend not to be U.S. citizens. Those areas that have the largest concentrations of Hispanics, even in California, tend to have very high proportions of persons who are immigrants, many of whom are here illegally. So you end up with a district which has the requisite number of persons in the district, but a much much smaller population that is actually eligible to vote. In England, they call those kinds of burroughs rotten boroughs. You are essentially packing voting jurisdictions with people who have no franchise.

Mr. GOODLATTE. What do you believe would be some good alternatives to our current system of bilingual ballots?

Ms. CHAVEZ. Well, I think that the idea that you allow those people who do have a demonstrated need to have assistance. I think that's absolutely appropriate. I do not want to see anyone denied the right to vote simply because they are too old and were educated outside this country and have not been able to learn English. I would like them to have assistance if they have become citizens under our naturalization laws.

I think there are places isolated. I am from New Mexico. There are still villages in northern New Mexico where there are elderly people who grew up not speaking a word of English, and to this day do not speak English. They ought to have the right to vote, and they ought to be provided assistance.

But mandating bilingual ballots by a formula which takes a look at voting patterns in 1972, because that's the trigger whether or not 50 percent of the voting population voted in the 1972 Presidential election. It makes no sense. Nor does simply counting the number of people who are so-called language minorities. A majority of the U.S. born Mexican-Americans living in the United States today speak only one language. That one language is English. So to assume that they are Spanish speakers is simply wrong.

Mr. GOODLATTE. Thank you very much. Ms. Hernandez, the 1974 census data reveals that the year before the bilingual ballot provisions were enacted, 22.9 percent of those who identified themselves of Hispanic origin voted. In 1990, only 21 percent of that same group voted. How does your testimony in which you say that Latino voter participation increased five times the rate of the rest of the Nation comport with U.S. census data?

Ms. HERNANDEZ. Well actually what you are dealing with is that between 1973 and today, the percentage of Latino participation one, has grown tremendously. Let me give you California as an example. Today in California, as you know, the population in California is in excess of 30 million. Of those 30 million, over 25 percent are Latino. A large percentage of that growth has been in the last 15 years.

The other consideration that one must take is that Mexican-Americans, and now I speak about Mexican-Americans, but it falls for the Hispanic Latino community, is the youngest community in the United States. In fact, for the Mexican-American community, it is the youngest. So when you look at populations, you have to

do a couple of things. First, you have to extract all of the people that are under 18 that can not vote. Then what you have to look at also is that the lowest participation of voters are those people between 18 and 25. That's for all individuals. So that you are dealing with a very low voter participation.

Another factor that you are looking into is that many of these individuals, and we estimate about 20 to 25 percent, are legal residents, noncitizens. That is changing all together.

Mr. GOODLATTE. Let me interrupt. My time has expired. Without objection, I'll give myself 2 additional minutes, and make this point as well.

The census data does not distinguish between citizens and non-citizens. So I'm not sure that the facts that you are citing would comport with the evidence that there's actually really been no change or if anything, a slight decline in the overall percentage of those of Hispanic origin participating in voting. Therefore, it calls into question in my mind, whether or not there is any benefit from these mandated and arbitrarily prescribed bilingual voting balloting requirements.

Let me tie in Ms. Fairey at this point, because while she was out, we had—I don't know if you heard the exchange we had. I asked Mr. Patrick about your particular case, where you have only had one request in your entire 16 year tenure.

Ms. FAIREY. Yes.

Mr. GOODLATTE. And yet that requires you to go through a number of complicated steps to get precincts changed. For example, if you want to split a precinct because it's become too large you have to go through the U.S. Department of Justice to accomplish that. Mr. Frank offered that he thought that perhaps in at least some instances, and I probably would hope to see it in more instances in the Voting Rights Act, we could make that a complaint-driven procedure, rather than one where you automatically have to go to the Justice Department. Would you find that to be helpful to you?

Ms. FAIREY. Well that certainly would be. It would relieve us of the responsibility of this time frame we're talking about prior to any election, getting preclearance. So this certainly would be an asset to our county.

If we're talking about other options, one of the other things that we had thought of also is that in our English ballot, we could put an insert. In some counties that are not under this act, are just putting in a little insert. It's a post card that can be sent in if you want to request the Spanish ballot and materials. The only thing that it wouldn't alleviate us of the translation cost. That would still be there.

Mr. GOODLATTE. Thank you.

Mr. Canady.

Mr. CANADY. I don't have any questions. I do want to thank each member of the panel for being with us. I particularly want to thank Ms. Chavez. Your testimony I think puts this issue in very helpful perspective, the historical background you gave is I think very enlightening. I think you made some good suggestions about ways to accomplish what this mechanism is ostensibly designed to accomplish, which would be less burdensome on local governments. I thank you for that.

Mr. GOODLATTE. Thank you, Mr. Chairman. I too would like to thank all of the participants for your contribution here today. I would like to simply close by saying that bilingual ballots were a means to remedy this alleged discrimination. However, when the ballots were authorized in 1992, after 17 years of use, no statistical evidence was produced to show that bilingual ballots had increased voter participation by language minorities in any covered jurisdiction. Based upon that, plus the testimony we have heard today, I believe it is entirely appropriate and necessary to reexamine the Federal Government's requirement that certain jurisdictions print and distribute election materials in a variety of languages to non-English speaking voters.

Thank you all for your participation. If there is nothing further, this hearing is adjourned.

[Whereupon, at 11:46 a.m., the subcommittee adjourned.]

## APPENDIX

### MATERIAL SUBMITTED FOR THE HEARING BILINGUAL VOTING MATERIALS: MAILINGS AND COST

#### LOS ANGELES COUNTY

<u>DATE OF ELECTION</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
Nov. 1992	3,264	N/A	N/A
Nov. 1993	11,294	\$451,790	\$40.00
June 1994	12,175	\$292,052	\$23.99
Nov. 1994	16,243	\$345,477	\$21.26
Nov. 1995	8,113	\$281,030	\$34.64
Mar. 1996	27,304	\$350,000*	\$12.82

\* estimate of the Registrar-Recorder/County Clerk of the County of Los Angeles

#### LOS ANGELES CITY

<u>DATE OF ELECTION</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
Nov. 1992	927	\$125,250	\$135.11
April 1995	11,128	\$223,995.80	\$20.13
June 1995	12,511	\$108,933.06	\$8.71

#### LONG BEACH

<u>DATE OF ELECTION</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
Nov. 1992	22	\$6,200	\$281.81
April 1996	375*	N/A	N/A

\* The City of Long Beach received requests from Los Angeles County for 501 different bilingual ballots, but according to census data was only required under the Voting Rights Act to fulfill 375 of those requests.



**Statistical Breakdown  
by Language**

**LOS ANGELES COUNTY  
Statewide Election, November 2, 1993**

<b><u>LANGUAGE</u></b>	<b><u>NUMBER OF REQUESTS</u></b>	<b><u>TOTAL COST</u></b>	<b><u>COST PER VOTER</u></b>
SPANISH	5,067	\$124,957.02	\$24.66
CHINESE	4,573	\$152,866.03	\$33.43
JAPANESE	443	\$47,244.97	\$106.65
VIETNAMESE	820	\$79,337.24	\$96.75
TAGALOG	391	\$47,385.05	\$121.19
<b>TOTAL</b>	<b>11,294</b>	<b>\$451,790.31</b>	<b>\$40.00 (average cost per voter)</b>

**LOS ANGELES COUNTY  
Primary Election, June 7, 1994**

<b><u>LANGUAGE</u></b>	<b><u>NUMBER OF REQUESTS</u></b>	<b><u>TOTAL COST</u></b>	<b><u>COST PER VOTER</u></b>
SPANISH	5,933	\$12,116.54	\$2.04
CHINESE	4,413	\$102,437.85	\$23.21
JAPANESE	508	\$45,340.13	\$89.25
VIETNAMESE	811	\$55,999.82	\$69.05
TAGALOG	510	\$76,158.58	\$149.33
<b>TOTAL</b>	<b>12,175</b>	<b>\$292,052.92</b>	<b>\$23.99 (average cost per voter)</b>

**LOS ANGELES COUNTY**  
1994 General Election

<u>LANGUAGE</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
SPANISH	9,108	\$58,523.80	\$6.43
CHINESE	4,849	\$85,053.88	\$17.54
JAPANESE	572	\$66,630.46	\$116.49
VIETNAMESE	1,022	\$67,700.18	\$66.24
TAGALOG	692	\$67,568.87	\$97.64
<b>TOTAL</b>	<b>16,243</b>	<b>\$345,477.19</b>	<b>\$21.27 (average cost per voter)</b>

**LOS ANGELES COUNTY**  
Consolidated Elections, November 7, 1995

<u>LANGUAGE</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
SPANISH	4,835	N/A	N/A
CHINESE	2,810	N/A	N/A
JAPANESE	55	N/A	N/A
VIETNAMESE	229	N/A	N/A
TAGALOG	184	N/A	N/A
<b>TOTAL</b>	<b>8,113</b>	<b>\$281,030</b>	<b>\$34.64 (average cost per voter)</b>

**LOS ANGELES COUNTY**  
**Primary Election, March 26, 1996**

<u>LANGUAGE</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
SPANISH	17,501	N/A	N/A
CHINESE	6,382	N/A	N/A
JAPANESE	802	N/A	N/A
VIETNAMESE	1,501	N/A	N/A
TAGALOG	1,118	N/A	N/A
<b>TOTAL</b>	<b>27,304</b>	<b>\$350,000*</b>	<b>\$12.82 (average cost per voter)</b>

\* estimate of the Registrar-Recorder/County Clerk of the County of Los Angeles

**LOS ANGELES CITY**  
Primary Election, April 11, 1995

<u>LANGUAGE</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
SPANISH	6,306	\$52,641.66	\$8.35
CHINESE	2,870	\$40,343.47	\$14.06
JAPANESE	377	\$30,034.15	\$79.67
VIETNAMESE	593	\$30,202.20	\$50.93
TAGALOG	428	\$35,026.56	\$81.84
KOREAN	554	\$35,747.76	\$64.53
<b>TOTAL</b>	<b>11,128</b>	<b>\$223,995.80</b>	<b>\$20.13 (average cost per voter)</b>

**LOS ANGELES CITY**  
General Election June 6, 1995

<u>LANGUAGE</u>	<u>NUMBER OF REQUESTS</u>	<u>TOTAL COST</u>	<u>COST PER VOTER</u>
SPANISH	7276	\$19,114.86	\$2.63
CHINESE	2967	\$20,802.59	\$7.01
JAPANESE	402	\$15,123.14	\$37.62
VIETNAMESE	645	\$16,285.70	\$25.25
TAGALOG	474	\$16,750.90	\$35.34
KOREAN	747	\$20,855.87	\$27.92
<b>TOTAL</b>	<b>12,511</b>	<b>\$108,933.06</b>	<b>\$8.71 (average cost per voter)</b>

SOURCE: Information on the elections held in November 1992 was found in the article "Multilingual democracy raises cost of elections," Washington Times, April 13, 1993. Information regarding all other elections was obtained from the offices of the County of Los Angeles Registrar-Recorder/County Clerk (Election Information Section), the Los Angeles City Clerk (Election Division), and the City of Long Beach City Clerk.

# Bilingual Ballot Law Fails to Help Chinese-American Voters

By ASHLEY DURN

Two years after the passage of Federal legislation mandating bilingual ballots for Chinese-American voters in parts of Manhattan, Brooklyn and Queens, the city has failed to comply with the law, citing the smallest city of its resources and citing voting machines to hinder the task.

The city has been able to print sample ballots in Chinese, provide interpreters at polling stations, and conduct public affairs, but it has not been able to provide the city's growing population of Chinese-American voters.

But despite repeated criticism from the United States Department of Justice, the city has not yet been able to provide the city's growing population of Chinese-American voters.

## What advocates call crucial, the city calls impossible.

characters -- a deficiency that the Justice Department believes means it "cannot be corrected."

In a letter to the city in March, the Justice Department said the city's voting procedures were inadequate in meeting the requirements of the law and opened the city to possible legal action.

### A Problem of Mechanics?

Members of New York City's Board of Elections say the problem of providing bilingual ballots is not a matter of politics or policy, but simply mechanics -- the ballot boxes on the voting machines are just not sized to accommodate English and Chinese characters.

"There is no human way this can be done," said Commissioner Paul Miran. "It's not because we don't want to do it. We want to do it. But just as the machines, it just won't fit."

Groups of Chinese-American community groups, including the Chinese Voters Education Alliance and the New York Chinese Senior Citizens Center, have joined together to try to force the Board of Elections to provide bilingual ballots for the Sept. 13 primary.

The groups argue that the translations are critical for Chinese-American voters because English letters are different from Chinese characters. They say they believe the translations can be placed on the ballots and the ballot is only being used to guarantee an unimpaired vote.

"Chinese-American voters are not able to participate in the same way as other voters. There are Chinese-Americans who have been discriminated," said Margaret Fung, executive director of the Asian American Legal Defense and Education Fund. "When there is already a little participation in the voting process, this is a very serious issue."

The changes to the Voting Rights Act require that bilingual ballots be provided to counties where more than 10,000 residents speak the same foreign language and are not proficient in English.

## Parking Rules

Because of the Roman Catholic feast of the Assumption of the Blessed Virgin, alternate-day street cleaning regulations will be suspended in New York City tomorrow. Other regulations will remain in effect.

Prior to the law's passage, Chinese voters had to go to a group with bilingual ballots only if a group with bilingual ballots could be found in 5 percent of the voting-age population.

The new law requires that Chinese-American voters receive bilingual ballots in all of the city's election districts in Chinatown in Manhattan, in Flushing, Queens, and in Sunset Park, Brooklyn. There are about 14,000 Chinese-American voters living in the three boroughs who have limited proficiency in English, according to the city census.

The new requirements have caused problems among the voters, particularly in areas that have had to print ballots in Asian and American Indian languages.

### Los Angeles Difficulties

For example, Los Angeles County has provided sample ballots in English, Chinese, Tagalog, Japanese, Vietnamese and Spanish, but has yet to find a way to print all these languages on the actual ballots.

"We would have to change our whole voting system," said Ron Carson-Vaer, head of Los Angeles County's Board of Supervisors. "We think there are only machines not there that could accommodate all those languages."

New York City's problems have been compounded by the fact that the city's Chinese-American population is growing at a faster rate than the city's overall population.

With more than 5,000 election districts in the city and 3.2 million registered voters, translating material and conducting its distribution has been a major undertaking.

But what has complicated the issue is the limitation of the city's voting machines, which were introduced about 10 years ago.

Both printing companies contracted by the city to produce the ballots for the machines agree that there is not enough room to fit Chinese characters on a single ballot space.

But they and that the translation could be done if more space was used for each candidate's name, although they would have to develop some new methods.

### Space is Limited

There are a limited number of spaces in the voting machines and using two spaces for each candidate would mean the possibility of running out of room to list all the candidates.

In addition, several commentators say that using two spaces would only complicate the already in use process of printing ballots for hundreds of different election districts. For example, on ballots last year, the city erroneously printed the Chinese character for "no" as a translation for "yes."

Nancy R. Bernstein, spokeswoman for the Board of Elections, said that the problem of translating candidates' names will be resolved in a few years when the city begins using new electronic voting machines that can display up to five languages in one line.

The machines were demonstrated to last year's primary and general election in the Bronx and could be used for the first time in an election next year. The machines are expected to be phased in throughout the city over the next four to five years.

"We own it, have any problems here," Ms. Bernstein said. "We're asking the Chinese community to be patient and bear with us."

But Ms. Fung said that not much time has already elapsed. "I think the Chinese-American community has already been out there and is willing to accept the changes of the Board of Elections," she said. "They've had more than enough time. They have certainly said that if we just wait, it will happen. Well, we've waited and nothing has happened."

## AT THE POLLS

### Speaking the Voter's Language

Federal law requires local officials to print ballots in other languages if enough voters lack proficiency in English. Here are the affected areas in the region and the languages that must be accommodated.

### CONNECTICUT

Spanish: Towns of Bridgeport, Hartford, New Britain and Windham.

### NEW JERSEY

Spanish: Essex, Hudson, Middlesex, Passaic and Union Counties.

### NEW YORK

Spanish: Bronx, Brooklyn, Manhattan and Queens; Suffolk and Westchester Counties.

Chinese: Brooklyn, Manhattan and Queens.

Malay: Franklin County.

Source: Justice Department.

### BALLOTING IN TWO LANGUAGES

A sample ballot from last November's election in English and Chinese. On the actual voting machines there are two slots beneath each candidate's name, leaving no room for the Chinese characters.

		A ★ DEMOCRATIC A 10	B ★ REPUBLICAN B 10
1	Mayor A 10 B 10 Vote for mayor: B 10	David M. Dinkins A 10 B 10	Rudolph W. Giuliani B 10 C 10
2	Public Advocate A 10 B 10 Vote for mayor: B 10	Mart Green A 10 B 10	Susan D. After A 10 B 10
3	Comptroller A 10 B 10 Vote for mayor: B 10	Alan G. Horvitz A 10 B 10	Herman Badilla B 10 C 10
		Wendell H. Harris A 10 B 10	Debra W. Harris B 10 C 10

Source: New York Times.





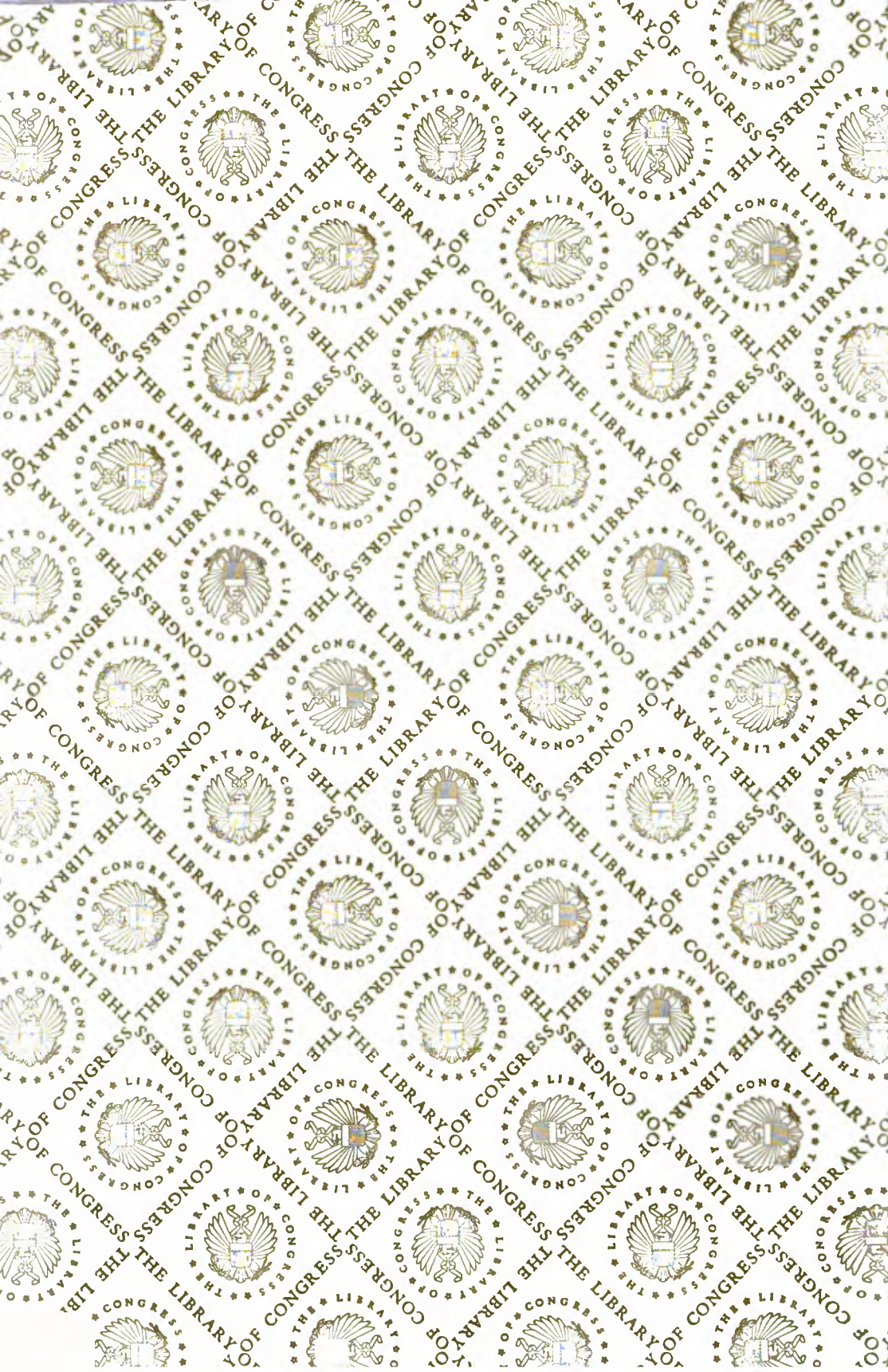




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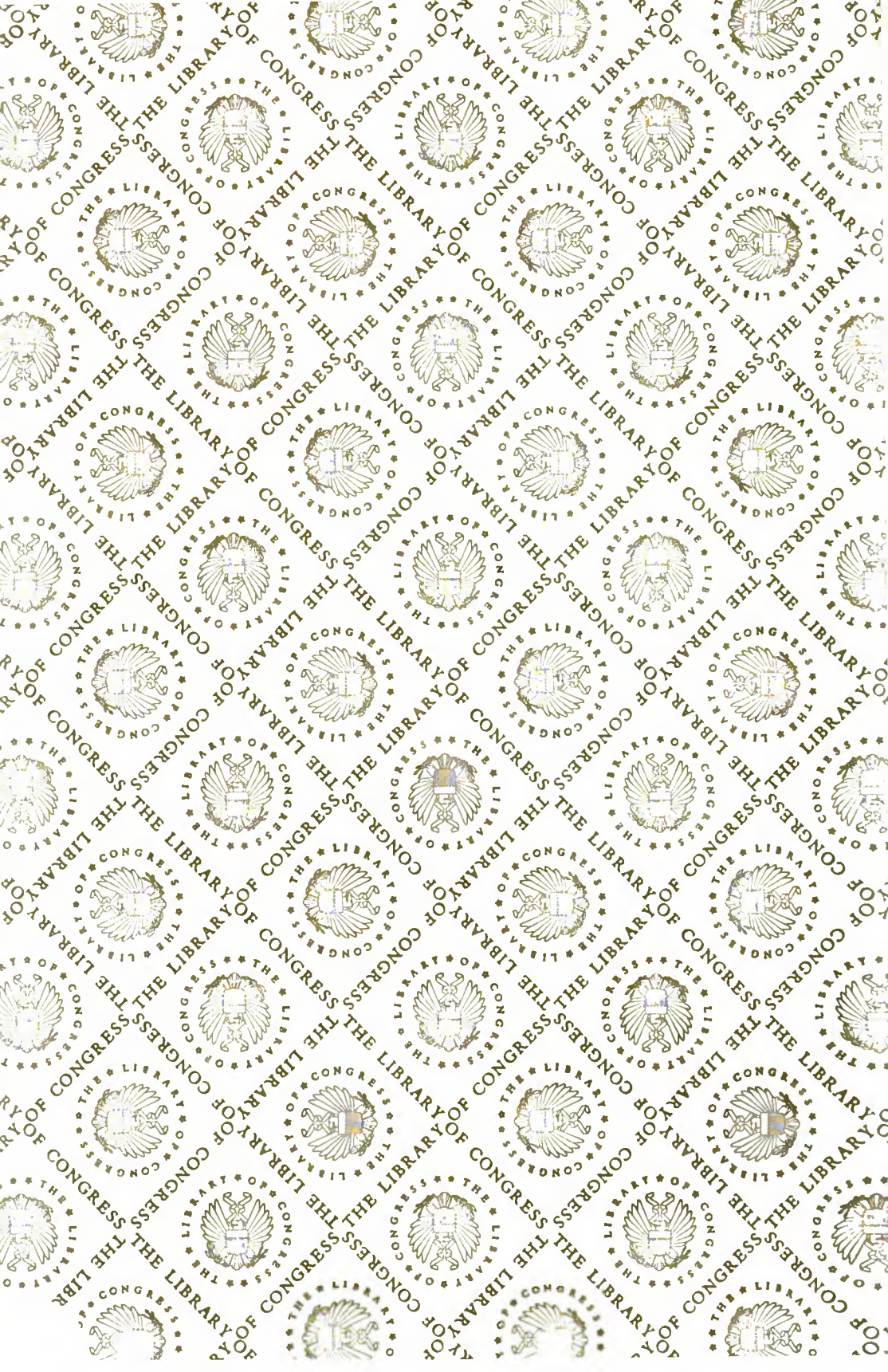


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